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THE MAJOR WAR CRIMINALS

BEFORE

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ONE HUNDRED AND EIGHTY-SECOND DAY

Friday, 19 July 1946

Morning Session

PROFESSOR DR. FRANZ EXNER (Counsel for Defendant Jodl): Mr. President, may it please the Tribunal, I shall proceed with the reading of my final argument.

I should like to recall the fact that yesterday I tried to show that Jodl, in any event until the year 1939, could not have been party to a conspiracy. But perhaps it is maintained that Jodl did not join the conspiracy until after 1939. As a previous speaker has already explained, an officer who works with others in the place assigned to him in carrying out a war plan can never be considered a conspirator. He does, in fact, have a plan in common with his superior, but he has not adopted it of his own accord, nor has he concluded an agreement to that effect, but within the normal scope of service he simply does what the post he occupies demands.

Jodl in particular can be considered a typical example of this. He did not go to Berlin of his own free will. It had already been decided long before that he would enter the Führer's staff in case of war. Orders for the current mobilization year specified this. This mobilization year ended on 30 September 1939; for the following year General Von Sodenstern was already designated as Chief of the Armed Forces Operations Staff. Therefore, if the war had broken out 6 weeks later, Jodl would have entered the war as commander of his mountain division. He would then, in all probability, not be in this dock today. Thus it becomes clear that his whole activity in the war was fixed by a ruling which was independent of his will and had been laid down in advance long before. This fact is, in my opinion, in itself already striking proof that he did not participate in a conspiracy to wage wars of aggression.

When Jodl reached Berlin on 23 August 1939, the beginning of the war had been fixed for 25 August. For reasons unknown to him it was then postponed another 6 days. The plan for the campaign was ready. He did not need to conspire to produce it. If any conspiracy against Poland did exist at that time, the conspirators were to be found elsewhere, as we now know from the German-Russian Secret Treaty.

Jodl was not introduced to the Führer until 3 September 1939, that is after the war had begun, at a time when the final decision had already been taken. From then on his official position brought him close to Adolf Hitler; but, of course, one must add, close to him in locality only. He was never really on intimate terms with him. Even then, he did not learn of Hitler's plans and intentions and was only told of them as the occasion arose to the extent that his work absolutely demanded. Jodl never became Hitler's confidant and never had cordial relations with him. It remained a purely official relationship—often enough one of conflict.

In other ways, too, Jodl had remained a stranger to the Party. There is no suggestion of his having sought contact in Vienna, for instance, with the local Party leaders, although this would have been natural enough. Most of the Party leaders and most of the defendants he came to know only when they visited the Führer's headquarters from time to time. With the exception of the officers, he had no relations with them. He abominated the Party clique in the headquarters and considered it an unpleasant foreign body in the military framework. He never ceased to fight against Party influences in the Armed Forces.

He did not attend Party functions. He did not take part in any Reich Party rally, apart from the fact that he once watched the Armed Forces display there on official orders. He never participated in the Munich memorial days on 9 November. The prosecutor has repeatedly referred to his Gauleiter speech to prove that, in spite of all this, Jodl identified himself with the Party and its efforts, and that he was after all not a soldier but a politician, and an enthusiastic supporter of Hitler.

Here one must first note that Document L-172, which is presented to us as this Gauleiter speech, is not the manuscript of this speech but a collection of material compiled by his staff, on the basis of which Jodl then drafted his manuscript. In addition, the speech was made extemporaneously. Not a single word of this document proves that Jodl really spoke it. Also the occasion of the speech must be taken into account. After 4 hard years of war, after the defection of Italy which had just taken place, before the fresh terrific burden which Hitler planned to impose on the population as the extreme effort, at this critical moment everything depended on upholding the people's will to carry on. For that reason the Party tried to get expert information upon the war situation so as to be able to buoy up sinking courage again. For this task the Führer chose General Jodl, no doubt the only competent person. Many a person would have welcomed this opportunity to make himself popular with the Party leaders, but Jodl accepted the task *contre cœur* and against his will. The title of

the address was: "The Military Situation at the Beginning of the Fifth Year of War." Its contents are a purely military description of the war situation on the various fronts, and how this situation was created. The beginning and the end, at least according to the document before us, constitute a hymn of praise to the Führer, from which the Prosecution draws unwarranted conclusions. When a lecturer has first and foremost to win the confidence of his listeners—consisting of Party leaders—and when his task is to spread confidence in the supreme military leadership, then such rhetorical flowery speech is quite understandable.

Incidentally, Jodl does not deny that he sincerely admired some of the Führer's qualities and talents. But he was never his confidant or his fellow conspirator, and even in the OKW he remained the nonpolitician he always was. Jodl was, therefore, not a member of a conspiracy. No concept of a conspiracy can help to make him responsible for criminal actions which he did not himself commit. And now I will deal with these individual actions of which Jodl is accused.

According to Article 6 of the Charter, the Tribunal is competent to deal with certain crimes against the peace, against the laws of war and against humanity, as specified in the Charter and involving personal criminal responsibility of the guilty individual. If we disregard for the time being the crimes against humanity, which come under a special heading, there are two preliminary conditions to any individual punishment of the defendants:

(1) There must be a violation of international law in which they were guilty of complicity in some respect. The point of this whole Trial and that of the Charter after all lies in the fact that the force of the rules of international law is to be strengthened by penal sanctions. If, therefore, some specific violation of international law is committed, not only the responsibility of the particular country which violated the law will be established as heretofore, but in addition guilty individuals shall also be punished for it in the future. Thus there can be no punishment without a previous breach of international law.

(2) Provision for such a responsibility of individuals is however not made in all cases of a breach of international law, but only for those explicitly named in the Charter. Article 6(a) specifies the crimes against peace, Article 6(b), crimes against the laws and usages of war. Other actions, even if contrary to international law, are not mentioned.

Quite a few court sessions might have been dispensed with if the Prosecution had taken these two points into account right from the beginning, because, as I shall show, there is a tendency to accuse the defendants, beyond these limits, of acts contrary to

international law which are not specified in the Charter. Nor is this all: they are to be called to account also for deeds which are in no way contrary to law, but can, at most, be considered as unethical. In the following points I shall adhere to the clear arrangement of the Anglo-American trial brief and add to it what was brought up against Jodl by the two other prosecutors.

Point (1) Collaboration in the seizure and consolidation of power by the National Socialists has, as I already pointed out, been dropped.

Points (2) and (3) concern rearmament and the reoccupation of the Rhineland.

Jodl had nothing to do with the introduction of compulsory military service or with rearmament. Jodl's diary contains not a single word about rearmament. He was a member of the Reich Defense Committee, which was not, however, concerned with the rearmament questions. He was here concerned with the measures which were to be taken by the civilian authorities in case of mobilization. There was nothing illegal in that. We were not forbidden to mobilize, for instance, in case of an enemy attack. The preparations in the demilitarized zone, which were proposed to the committee by Jodl, were also limited to the civilian authorities and consisted only of preparations for the evacuation of the territory west of the Rhine in order to defend the line of the river Rhine in case of a French occupation. The preparations were purely of a defensive nature.

If, in spite of that, Jodl recommended that these defensive measures be kept strictly secret, this is not evidence of any criminal plans, but was only the natural thing to do. As a matter of fact, particular caution was imperative, for the French occupation of the Ruhr was still fresh in people's memories. Neither did Jodl have anything to do with the occupation of the Rhineland; he learned about this decision of the Führer only 5 days before its execution. Further comment on my part should be superfluous, for according to the Charter neither rearmament nor the occupation of the Rhineland—whether contrary to international law or not—belongs to the criminal actions envisaged by Article 6. These cases would come within the Charter only if a preparation for aggressive war were seen in them. But who would have thought of an aggressive war at that period? In 1938, owing to lack of trained troops, we could not have put into the field one-sixth of the number of divisions our probable enemies, France, Czechoslovakia, and Poland, could have produced. The first stage of rearmament was supposed to be reached in 1942. The West Wall was to have been completed by 1952. Heavy artillery was entirely lacking; tanks were at the test stage; the ammunition situation

was catastrophic. In 1937 we did not possess a single battleship. As late as 1939 we did not have more than 26 seagoing U-boats, which was less than one-tenth of the British and French total. As far as war plans were concerned there existed only a plan for the protection of the Eastern frontier. The description of our situation in the Reich Defense Committee is very typical. It was said that as a matter of course a future war would be fought on our own territory; hence that it could only be a defensive war. This—please note—was a statement made during a secret session of this committee. The possibility of offensive action was not mentioned at all. But we were then not capable of serious defensive action either. For this very reason the generals considered themselves gamblers already at the time of the occupation of the Rhineland. But that any one of them could have been sufficiently optimistic to contemplate an offensive, of that there is not even the vestige of any evidence.

Points (4) to (6) of the trial brief refer to participation in the planning and execution of the attack on Austria and Czechoslovakia.

A deployment plan against Austria never existed. The prosecutors have submitted Document C-175 as such. But this is a misunderstanding; it is merely a program for the elaboration of diverse war plans, such as for a war against Britain, against Lithuania, against Spain, *et cetera*. Among those theoretical possibilities of war, "Case Otto" is also mentioned; this refers to an intervention in Austria in case of an attempt to restore the Hapsburgs. It says in the document that this plan was not to be worked out, but merely to be "contemplated." But since there was no indication whatsoever of such an attempt by the Hapsburgs, nothing at all was prepared for this eventuality.

Jodl did not attend the meeting on 12 February 1938 at Obersalzberg. Two days later came the order to submit plans for certain deceptive maneuvers, obviously in order to put pressure on Schuschnigg so that he should abide by the Obersalzberg agreements. There is nothing illegal in this, although the prosecutor speaks of "criminal methods." Jodl was completely surprised by the Führer's decision to march in, made 2 days before it was carried out, and transmitted by telephone. Jodl's written order served only for the files. If this had been the original order, it would after all have come much too late. It was issued at 2100 hours on 11 March and the troops marched in on the following morning. Developments were described to us here. The troops had purely peacetime equipment; the Austrians crossed the border to meet and welcome them; Austrian troops joined the columns and marched with the German troops to Vienna. It was a triumphal procession with cheers and flowers.

Then followed the case of Czechoslovakia. As late as the spring of 1938 Hitler stated that he did not intend "to attack Czechoslovakia in the near future." After the unprovoked Czech mobilization he changed his view and decided to solve the Czech problem after 1 October 1938—not on 1 October 1938—as long as no interference was to be expected from the Western Powers. Jodl therefore had to make the necessary preparations in the General Staff. He did this in the conviction that his work would remain theoretical because—since the Führer desired under all circumstances to avoid a conflict with the Western Powers—a peaceful settlement was to be expected. Jodl tried to make certain that his plan should not be interfered with by Czech provocation. And things really did turn out as he expected they would. After the examination by Lord Runciman had revealed that minority conditions in Czechoslovakia could not continue as they were and showed the correctness of the German point of view, the Munich Agreement with the Western Powers took place.

Jodl is charged with having suggested in a memorandum that an incident might be created as a motive for marching in. He has given us the reasons for it. But no incident took place. This memorandum is not a breach of international law, if only because it is a question of internal considerations which never achieved importance outside. And even if this idea had been put into execution, such ruses have been used ever since the Greeks built their Trojan Horse. Ulysses, the initiator of this idea, is praised for this by the ancient poets as "a man of great cunning," and not branded as a criminal. I do not see anything unethical in Jodl's behavior either, for after all in the relations between states somewhat different ethical principles obtain than are taught in Sunday schools.

The occupation of the Sudetenland itself was effected just as peacefully as that of Austria. Greeted enthusiastically by the liberated population, the troops entered the German areas which had been evacuated to the agreed line by the Czech troops. Both these "invasions" are not crimes according to the Charter. They were not attacks, which would presuppose the use of force; still less are they wars, which would presuppose armed fighting; least of all are they aggressive wars. To consider such peaceful invasions as "aggressive wars" would be to exceed even the notorious analogies evolved by National Socialist criminal legislation. The four signatory powers could have included these invasions, which were still a recent memory, in Article 6, but this was not done because it was obviously intended to limit to acts of war the completely novel punishment of individual persons, but not to penalize such unwarlike actions. Generally speaking, any interpretation of the

penal rules of the Charter tending toward an extension is inadmissible. The old saying applies: *"Privilegia stricte interpretenda sunt."* Here we have an example of *privilegium odiosum.* Indeed there has probably never been a more striking example of a *privilegium odiosum* than the unilateral prosecution of members of the Axis Powers only. Now it might also be attempted to make Jodl responsible for having drafted an invasion plan against Czechoslovakia at a time when a peaceful settlement was not yet insured. Jodl, however, counted on a peaceful settlement and had good reason to expect it. He therefore lacked the intention of preparing an aggressive war.

To this statement of facts, which excludes the question of guilt, must be added a legal consideration: We have established beyond any doubt that there is no punishment for crimes against the peace without previous violation of international law. Now if the Charter makes preparations for aggressive war subject to punishment, it clearly means that a person who prepared an aggressive war which actually took place should be punished. War plans, however, which remained nothing but plans, are not affected. They are not contrary to international law. International law is not concerned with what goes on in people's heads and in offices. Things which are immaterial from an international angle are not contrary to international law. Aggressive plans which are not executed—including aggressive intentions—may be unethical, but they are not contrary to law and do not come under the Charter.

Here we are concerned with plans which were not carried out because the peaceful occupation of the Sudetenland based on international agreement was not an aggressive war, and the occupation of the rest of the country, which incidentally was also accomplished without resistance and without war, no longer had any connection with Jodl's plans.

This occupation of the rest of Czechoslovak territory in March 1939 need not be discussed in greater detail here, for Jodl was in Vienna at the time and did not take part in this action. Neither did he have anything to do with its planning, for that has no connection whatsoever with Jodl's earlier work in the General Staff. In the meantime the military situation had changed completely; the Sudetenland with its frontier fortifications was now in German hands. The unopposed entry which then took place therefore followed totally different plans, if such plans existed at all. Jodl did not take part in the actual invasion.

Point (7) of the trial brief deals with war plans against Poland. The essential things have already been said on this subject: At the moment when Jodl left Berlin, no deployment plan against Poland existed. When he returned on 23 August 1939 the intention was

to enter Poland on the 25th. The plan for this was naturally ready; Jodl had no share in it.

The Prosecution stresses further that Jodl was present in Poland in the Führer's train on 3 September and that this was proof that he took part in the war. Is this, too, a reproach against a soldier?

Point (8) of the trial brief concerns attacks on the seven countries from Norway to Greece. The trial brief gathers these seven wars together into one point, and quite rightly too. They form one unit, because all of them resulted from military necessity and with logical consequence from the Polish war and from Britain's intervention. It is for this very reason that the fact that Jodl had nothing to do with the unleashing of the war against Poland is so important when judging him.

The historians will have to do a lot more research work before it is known how everything really came about. The only criterion for the judgment of Jodl's behavior is how he saw the situation at its various stages; whether, according to what he saw and knew, he considered Hitler's various decisions to wage war justified; and to what extent he influenced developments. That is all that we are concerned with here.

In connection with Norway and Denmark, may it please the Tribunal, I should like to refer to the statements made by Dr. Siemers the day before yesterday, and therefore I shall omit what comes next, but I should like to insert a statement at this point, namely, a statement regarding international law which is not contained in my manuscript. With reference to the statements made by Dr. Siemers in this regard the day before yesterday, in order to avoid any misunderstanding, I should like to add the following:

(1) There is not the slightest doubt that merchant ships of a state at war may pass through the neutral coastal waters. If its enemy, in order to prevent any traffic of that sort, mines the coastal waters, such action is a clear breach of neutrality. Even warships have the right to pass through, insofar as they adhere to the rules which have been stipulated and do not participate in any combat action in the coastal waters. And if this applies even to warships, it applies all the more to ships which are transporting prisoners of war.

(2) The fact that a war is a war of aggression does not in any way influence the validity and application of the normal war and neutrality rights. A contrasting opinion would lead to absurd results and would serve only to deal a deathblow to all the laws of war. There would be no neutral states, and the relations between the belligerents would be dominated by the principle of brute force. Each shot would be murder, each instance of capture would be punishable deprivation of liberty, each bombardment would be criminal material damage.

This war, in any event, was not conducted along such principles by either side, and even the Prosecution does not uphold this point of view . . .

THE PRESIDENT (Lord Justice Sir Geoffrey Lawrence): *[Interposing.]* One moment, Dr. Exner.

[There was a pause in the proceedings while the judges conferred.]

THE PRESIDENT: Go on.

DR. EXNER: Nor does the Prosecution maintain this point of view, otherwise they would not have charged the defendant with certain deeds as being crimes against the laws of war and the rights of neutrals. The entire charge under Count Three would not be understandable. And apart from that, Professor Jahrreiss has dealt with this question on Pages 32 to 35 of his final argument.

Jodl heard for the first time in November 1939—and this from Hitler himself—about the fears of the Navy that Britain was intending to land in Norway. He then received information which left no doubt that these fears were basically right. Furthermore, he had regular reports according to which the Norwegian coastal waters were coming more and more into the English sphere of domination, so that Norway was no longer actually neutral.

Jodl was firmly convinced—and still is today—that the German troops prevented the British landing at the last minute. No matter how Hitler's decision may be judged legally, Jodl did not influence it; he considered the decision justified and was bound to consider it as such. So, even if Hitler's decision were to be regarded as a breach of neutrality, Jodl did not give criminal help by his work on the General Staff.

Like every military expert, Jodl knew that if Germany had to fight out the war in the West, there was no other course but a military offensive. In view of the inadequacy of German equipment at the time and the strength of the Maginot Line, there was, however, from a military point of view, no other possibility for an offensive than through Belgium. Thus Hitler was, for purely military reasons, faced by the necessity of operating through Belgium. But Jodl also fully knew, as did every German who had lived through August 1914, how difficult such a political decision was as long as Belgium was neutral, that is, willing and able to keep out of the war.

The reports which Jodl received, and of the accuracy of which no justified doubts could be entertained, showed that the Belgian Government was already co-operating, in violation of her neutrality, with the general staffs of Germany's enemies. This, however, can be waived here in the defense of Jodl. It suffices to know—and

this is indisputable—that part of Belgium's territory, that is, the air over it, was being continually used by Germany's Western enemies for their military purposes.

And this applies perhaps even more strongly to the Netherlands. Since the very first days of the war, British planes flew over Dutch and Belgian territory as and when they pleased. Only in some of the numerous cases did the Reich Government protest, and these were 127 cases.

THE PRESIDENT: Dr. Exner, will you refer the Tribunal to the evidence which you have for that statement?

DR. EXNER: I beg your pardon?

THE PRESIDENT: Will you refer me to the evidence that you have for that statement?

DR. EXNER: What statement, Mr. President?

THE PRESIDENT: That protests were made in 127 cases.

DR. EXNER: I am referring to the statements made by the witness Von Ribbentrop. He said that 127 protests were made.

THE PRESIDENT: Go on.

DR. EXNER: The Prosecution does not put the legal question correctly. Before air warfare gained its present importance, conditions were such that a state wishing to remain neutral could prevent its territory from being continually used at will by one of the belligerents, or else its neutrality was clearly terminated. After air warfare became possible, a state might relinquish or be forced to relinquish to one of the belligerents the air over its territory, and yet remain outwardly and diplomatically neutral. But by the very nature of the idea, the defense of its neutrality can be claimed only by a state whose whole territory lies *de facto* outside the theater of war.

The Netherlands and Belgium, long before 10 May 1940, were no longer *de facto* neutral, for the air over them was in practice, with or against their will, freely at the disposal of Germany's enemies. What contribution they thus made toward Britain's military potential, that is, toward the strength of one of the belligerents, is known to everybody. One need only think of Germany's most vulnerable point, the Ruhr.

Our adversaries obviously maintained the point of view that insofar as the barrier constituted by Holland and Belgium protected Germany's industrial areas against air attacks, their neutrality was immaterial; but with regard to the protection afforded to France and England, any violation was a crime.

Jodl naturally realized the situation. His opinion on the legal aspect, was, of course, a matter of complete indifference to Hitler.

Here, too, his activity remained the normal activity of a General Staff officer.

THE PRESIDENT: One moment, please. Dr. Exner, is it your contention that it is in accordance with international law that if the air over a particular neutral state is made use of by one of the warring nations, the other warring nation can invade that neutral state without giving any warning to the neutral state?

DR. EXNER: In this respect I should like to maintain that this continual use of the air space over a neutral state—that is, for purposes of attack, for these planes flew over such territory in order to attack Germany—was a breach of neutrality. This breach of neutrality justified Germany's no longer regarding Belgium as a neutral country. Therefore, from the standpoint of the Kellogg Pact, or any previous assurance given with respect to neutrality, no charge can be made against Germany in this regard. Whether one can reproach Germany for the fact that she did not declare war in advance is something I leave open to discussion.

Incidentally, it may be presumed that the flights made by the British planes were not announced in advance either.

THE PRESIDENT: Well then, you are not prepared to answer the question I put to you?

DR. EXNER: Yes. The question was to the effect, Mr. President, whether a prior declaration was necessary; that was the question, Mr. President, was it not?

THE PRESIDENT: Whether you can attack a neutral state without giving any prior warning, that is, whether, in accordance with international law, you can attack a neutral state in such circumstances without giving any prior warning. That is the question.

DR. EXNER: My contention is that it was no longer a neutral state when it was attacked.

THE PRESIDENT: Then your answer is in the affirmative; you say that you can attack without giving any warnings, is that right?

DR. EXNER: There is an agreement in international law that war must always be declared in advance. In that sense Germany would have been bound to declare war beforehand. However, above and beyond that, because of the fact that this was not a neutral state, I do not believe that any other obligation still existed. I cannot see just why there should have been any obligation toward this state because it had been neutral at one time.

THE PRESIDENT: Well then, you say that there is a general obligation to declare war before you actually invade. You don't say, do you, that the fact that Holland was a neutral state prevented that obligation attaching?

DR. EXNER: That I am not prepared to assume. A general obligation I admit, but I do not believe there was a special obligation because of the former neutrality of Holland and Belgium. I fail to see what justification could be given for that.

THE PRESIDENT: Go on.

DR. EXNER: Now I shall turn to Greece. Hitler wanted to keep the Balkans out of the war, but Italy had attacked Greece against his will at the beginning of October 1940. When the Italians got into trouble, a request was made for German help. Jodl advised against it, since British intervention in the Balkans would then have to be reckoned with and every hope of localizing the Italo-Greek conflict would thus be lost. Hitler then ordered everything to be prepared in case of need for German aid to Italy against Greece. These are the orders of 12 November and 13 December 1940.

If the attempt to localize the Italo-Greek conflict did not succeed, it was clear that Greece would be involved in the great Anglo-German struggle. The question was now whether Greece would come within the war zone controlled by the British or the Germans. In the case of Norway, Belgium, and Holland, part of the territory of these countries was already at Britain's disposal before the beginning of open hostilities, and they were, therefore, objectively at least, not neutral, which possibly they could no longer be. It was the same with Greece now. The Indictment referring to Greece established that British troops were landed on the Greek mainland on 3 March 1941, after Crete had for some time before that come within the area controlled by the British. Hitler did not give permission for aerial warfare on Crete until 24 March 1941, and began the mainland attack only on 6 April.

Here, too, Jodl had no influence on Hitler's decisions. He could have no doubt that Hitler's decision was inevitable in view of the way in which the war between the world powers was now developing. There was no choice; ever-increasing parts of Greek territory would have been drawn into the sphere of British power and would have become the jumping-off points for bombing squadrons against the Romanian oil fields unless Germany stopped this process. Moreover, the experiences of the first World War were disquieting; the *coup de grâce* had at that time been made from Salonika.

Hitler wanted to keep Yugoslavia out of the war, too. The German troops in the Balkans had the strictest orders to respect her neutrality rigorously. Hitler even rejected the proposal by the Chief of the Army General Staff to ask the Yugoslav Government for permission to allow sealed trains with German supplies to pass through its territory.

The Simovic Putsch in Belgrade on the night after Yugoslavia joined the Tripartite Pact was considered by Hitler to be a malicious betrayal. He was of the opinion that the change of government at Belgrade, which reversed the course of its foreign policy, was only possible if Britain or the Soviet Union or both had provided cover from the rear. He was now certain that the Balkans would be fully drawn into the war tangle. He was certain that the German troops in Bulgaria were severely threatened, and also the German supply line which ran close to the Yugoslav frontier.

Under these conditions Hitler on the morning following the Belgrade Putsch took the decision for war, any preparation for which was absolutely lacking. Jodl's suggestions, and later Ribbentrop's too, to make things unambiguous by means of an ultimatum, were never considered. He wanted to make sure that Yugoslavia and Greece should not come into the sphere of influence of Britain but into that of Germany. The next day's news concerning Moscow's telegram of friendship to the Belgrade Putsch government and about the Yugoslav deployment then already in progress, as confirmed by the statement of the witness Greiffenberg (Document Book 3, Document Number Jodl-65, Exhibit AJ-12), and lastly the Russo-Yugoslav Friendship Pact, were for Jodl irrefutable signs that Hitler had correctly foreseen the connection of events. The decision to fight was taken by Hitler, and by Hitler alone.

Point (9) concerns the war against the Soviet Union. What each of the two Governments in Berlin and Moscow actually wished to achieve by the agreement of 23 August 1939 is not certain. One thing, however, is certain, and that is that these partners who were until then enemies had not arranged a love marriage. The Soviet Union was for the German partner a completely mysterious quantity, and remained so. Anyone who fails to consider this fact can in no way judge Hitler's decision to make a military attack on the Soviet Union, least of all the question of guilt.

If anywhere, it was in the Russian question that Hitler came to a decision without even listening to the slightest advice from anyone, to say nothing of taking it. He wavered for many months in his opinion about the intentions of the Soviet Union. The relations of the armies on both sides of the demarcation line from the very beginning were full of incidents. The Soviets at once occupied the territories of the Baltic States and of Poland with disproportionately strong forces.

In May and June 1940, when there were only 5 or 6 German covering divisions in the East, the Russian deployment against Bessarabia with at least 30 divisions, reported by Canaris, and the deployment into the Baltic territory caused great anxiety. On 30 June 1940 apprehensions were again allayed, so that Jodl—as

Document 1776-PS has shown—even thought that Russia could be counted on as an aid in the fight against the British Empire. But in July there were renewed worries. Russian influence was progressing energetically in the Balkans and the Baltic territories. Hitler began to fear Russian aggressive intentions, as he told Jodl on 29 July.

The transfer of several divisions from the West, where they were no longer required, actually had nothing to do with this. This occurred at the request of the commander in the East who could not fulfill his security task with his weak forces.

Hitler's worry above all concerned the Romanian oil fields. He would have preferred to eliminate this threat back in 1940 by a surprise action. Jodl replied that owing to the bad deployment possibilities in the German Eastern Territories this could not be considered before winter. Hitler demanded verification of this opinion and Jodl arranged for the necessary investigations in a conference with his staff at Reichenhall, which was obviously misunderstood by the Russian Prosecution. On 2 August Hitler ordered improvements to be made in the deployment possibilities in the East—a measure which was no less indispensable for defense than for an offensive.

Toward the end of August—this is the order of 27 August—10 infantry divisions and 2 Panzer divisions were brought into the Government General in case a lightning action should become necessary for the defense of the Romanian oil fields. The German troops, now totaling 25 divisions, were indeed intended to appear stronger than they really were, so that an action should become unnecessary. This is the meaning of Jodl's order for counter-espionage (Document Number 1229-PS). Had there been offensive intentions at that time, there would presumably have been an attempt to make Germany's forces appear smaller than they were.

At the same time Hitler appears to have given the Army General Staff orders—without Jodl knowing anything about it—to prepare an operational plan against Russia for any eventuality. In any case, the Army General Staff, General Paulus, worked on operational plans of this kind as from the autumn of 1940.

Unfavorable information then accumulated after the Vienna arbitration on 30 August 1940. If Jodl was to believe his utterances, Hitler was becoming convinced that the Soviet Union had firmly resolved to annihilate Germany in a surprise attack while she was engaged against Britain. The leaders of the Red Army had, according to a report of 18 September, declared a German-Russian war to be inevitable (Document Number C-170). In addition, reports came in of feverish Russian preparations along the demarcation line. Hitler counted on a Russian attack in the summer of 1941 or winter

of 1941-42. He thus decided, should the discussions with Molotov fail to clear up the situation favorably, to take preventive steps. For in that case the only chance for Germany lay in offensive defense. For this eventuality, preparatory measures were ordered by Hitler on 12 November 1940 (Document Number 444-PS).

The failure of the discussions with Molotov decided the question. On 18 December 1940 Hitler gave orders for the military preparations. Should the coming months clear up the situation, all the better. But it was necessary to be prepared in order to deliver the blow in the spring of 1941 at the latest. This was presumably the latest possible moment, but also the earliest, since more than 4 months were required for the deployment.

Jodl, as an expert, emphatically pointed out to Hitler the enormous military risk which could be run only if all political possibilities of averting the Russian attack were really exhausted. Jodl became convinced at that time that Hitler actually had exploited every possibility.

The situation grew worse. According to reports which were received by the Army General Staff at the beginning of February 1941, 150 Russian divisions, that is, two-thirds of the total Russian strength known, had deployed opposite Germany. Yet only the first stage of the German deployment had begun.

The Soviet Government's telegram of friendship to the participants in the Belgrade Putsch on 27 March 1941 destroyed Hitler's last hope. He decided upon an attack, which however had to be postponed for more than a month owing to the Balkan war.

The deployment was undertaken in such a manner that the mechanized German units, without which the attack could not be conducted at all, were brought to the front only during the last 2 weeks, that is, after 10 June.

Genuine preventive war is one of the indispensable means of self-preservation, and was indisputably permitted according to the Kellogg-Briand Pact. The "Right of Self-Defense" was understood by all the signatory states.

If the situation was wrongly construed, the German military leaders cannot be blamed for their error. They had reliable reports on Russian preparations which could only make sense if they were preparations for war. The reports were later confirmed. For when the German attack met the Russian forces, the German command received the impression of running into a gigantic deployment against Germany. General Winter developed this here in detail in addition to Jodl's statements, particularly with regard to the enormous number of new airports near the line of demarcation, and he drew particular attention to the fact that the Russian staff units

were provided with maps of German territories. Field Marshal Von Rundstedt also confirmed this as a witness before the Commission. This will come before the Tribunal during the further course of the Trial.

Jodl firmly believed that Hitler would never have waged war against Russia unless he had been absolutely convinced that no other path was open to him at all. Jodl was aware that Hitler fully appreciated the danger of a two-front war and would jeopardize victory over England—which he thought was assured—only in the utmost emergency. Jodl simply did his job as an officer of the General Staff. He was convinced, and still is today, that we were waging a genuine preventive war.

I come now to Point (10) of the trial brief, concerning war against the United States. That Jodl had no desire to supplement the number of our enemies with a world power is obvious, and is also shown by documents.

Now what is the position with regard to the responsibility for these campaigns? A declaration of war is a decision in the field of foreign politics, the most important one in the whole of this field. It depends on the constitutional structure of the concrete state as to who is responsible for this decision—politically, criminally, and morally—and on the way the formation of a decision in the field of foreign politics takes place in the state according to its constitution. Professor Jahrreiss has said of this that in the Führer State it is exclusively the Führer who has to make this decision. Anyone who advises him about this cannot be responsible, for, if what the Führer orders is legally right, he who influences this order cannot be acting illegally.

The Charter obviously represents the opinion that those who in any way participate in the Führer's decision or influence it are coresponsible. If we take this legal conception as authoritative the question of responsibility crystallizes into a problem of competence.

In every community the tasks of its organs must be limited; there must be rulings on competence laying down what each official is called upon to do and not to do. Thus in all states the relations between the military and the civil administration are naturally regulated, just as within the military and within the administration the tasks and the relations between their thousands of offices are regulated. If things were otherwise, chaos would reign.

Particularly in wartime the problem of competence in the relations between the political and military leadership is important. The military being the most important instrument of policy, the assistant may easily try to become master, in other words, the military may try to interfere in politics. It was German tradition to avoid this. The Bismarck Reich took great pains to keep the officers

far removed from politics; they had no right to vote, were not allowed to go to political meetings, and in fact any statements on politics made by an officer were looked upon askance. For this might in some way be looked upon as taking sides, which was severely prohibited. The military were to be politically blind, completely neutral, and were to adhere to a sole point of view, which was that of legitimacy, that is, subordination to the legitimate ruler.

Thus in the years 1866 and 1870 when there was danger of war, it was not Moltke but Bismarck who advised the king as to the political decision. This changed during the last years of the first World War. General Ludendorff became the strongest man in the Reich, owing to the force of his personality and the weakness of his political opponents. People often talk of Prussian militarism, and for the time when the military had seized political power this was justified. The Weimar State completely abolished this. The nonpolitical character of the Reichswehr was stressed very emphatically and the military were again limited to their particular field. This went so far that a civilian was made minister for war, who had to represent the Reichswehr politically in the Reichstag. The longest period of office was held by a Liberal Democrat minister, who was meticulously careful to avoid all political influence by the generals.

When founding the Wehrmacht Adolf Hitler maintained this sharp distinction between politics and military, indeed he even stressed it in a certain sense. He, who wished to make the whole people political-minded, wanted a nonpolitical Wehrmacht. The soldier was deprived of political rights: He was not allowed to vote or to belong to any party, not even the NSDAP, as long as the old law on military service was in force. In keeping with that, he also kept his generals and highest military advisers away from any part in political affairs. He also remained consistent toward his own party. When, after Fritsch had gone, a new Commander-in-Chief of the Army was to be appointed, it would have been easy enough to have chosen Von Reichenau, who had National Socialist leanings, but he appointed Von Brauchitsch. He did not want any political generals, not even National Socialist ones. His point of view was that he was the Führer, he was the politician; the generals had to see to their own affairs; they knew nothing about politics. He did not even tolerate advice when it concerned politics. The generals did, in fact, repeatedly venture to express doubts as to his political plans, but were obliged to limit themselves strictly to purely military points of view. This sharp division into political and military spheres of competence is, for that matter, not characteristically German. It applies also, if I am correctly informed, to the Anglo-Saxon democracies, and indeed to a particularly pronounced degree.

At any rate it was thus under Hitler: He made political decisions, and it was only on their military execution that the generals had any influence. It was their task to make the military preparations corresponding to any political eventualities. But it was Hitler who pressed the button which would set the machine in motion. The "whether" and "when" were decided by the Führer. It was not for them to weigh the advantageousness, the political feasibility, or the legal permissibility.

Psychologically this attitude of the Führer became still more pronounced owing to the almost inconceivable mistrust he felt toward his generals. An extraordinary phenomenon; yet, anyone who disregards it can never come to understand the atmosphere which reigned in the Führer's headquarters. It referred—he thought—to the reactionary attitude of the officers' corps. He never forgot that the Reichswehr had fired at National Socialists in 1923. It was, moreover, the natural mistrust of the military dilettante toward the military expert, for he wanted to be a strategist; and also probably the mistrust of the political expert toward political dilettantes in officers' uniform. This mistrust of the political insight of his military entourage was moreover by no means entirely unfounded. For the generals had wanted to put a brake on his rearmament plans, to hold him back from the occupation of the Rhineland, and had expressed objections to his march into Austria and to his occupation of the Sudetenland. And yet all these actions had succeeded smoothly and without bloodshed. The generals felt like gamblers when carrying out the plans, but Hitler was sure of his game. Is it to be wondered at that their political judgment did not carry too much weight with him, and is it to be wondered at that from the other side the apparent infallibility of his political judgment met with more and more recognition?

Thus Hitler tolerated no interference in his political plans, and the result of it, as has been drastically represented to us here, was that, had a general raised objections to Hitler's political decisions, he might not actually have been shot, but his sanity would have been questioned.

Altogether this man of power detested being given advice. Thus at the beginning of military undertakings the chances of the plan were hardly ever considered in general discussions. None of the important decisions since 1938 came about as the result of advice. On the contrary, the decision often came as a total surprise to the military command. This applies, for instance, to the march into Austria, of which Jodl learned 2 days before it happened, or in the case of the attack on Yugoslavia, which was suddenly decided upon by Hitler and carried out without any

preparations within a few days. The alleged "discussions" at the Führer's headquarters, the course of which the witness Field Marshal Milch described so clearly, were nothing but briefings.

Within the Wehrmacht the spheres of competence of the individual departments were also, of course, sharply divided, and the method which Hitler used to make these divisions as insurmountable as possible is of interest. This was achieved by the method of secrecy. Enough has been said about this, particularly about the so-called "Blinkers' Order," which forbade anybody to obtain insight into anybody else's work. Thus each department was isolated and strictly limited to its own tasks. Obviously what Hitler desired to achieve by this system was that he should retain the reins in his hands as the only fully informed person.

Indeed he strengthened this system still more by only too often playing off individuals, groups, and departments one against the other to prevent any conspiracy among them.

Mr. President, I have concluded my paragraph.

THE PRESIDENT: We will adjourn now.

[A recess was taken.]

DR. EXNER: These methods of isolationism which I mentioned before are interesting, because they often inevitably came into conflict with one of the basic ideas of National Socialism, the Führer Principle; but they were carried through in spite of this, for instance when the competence of two departments covered the same territory, such as the competence of a military commander and of Himmler in the same occupied territory. What was ordered by one did not concern the other, even though the execution of the order might encroach upon the arrangement for which the other was responsible. Thus the military commander was in no way master in his territory. Things were the same in the civil administration too: There was the double role of the Landrat as a State functionary and the Kreisleiter as a Party functionary, of the Reichsstatthalter and the Gauleiter.

Everywhere there was a dualism of powers and therefore a dissipation of power. There was method in this; it prevented lower organs becoming too strong and safeguarded the power of the supreme leadership. It may be said epigrammatically that the Führer Principle was realized only in the Führer.

What was the position of Jodl's sphere of competence within all this machinery? He was the Chief of the Armed Forces Operations Staff, which was a department of the OKW coming under Keitel. Jodl's main task was, as the name of the department

implies, to assist the Supreme Commander in the operational leadership of the Armed Forces. He was the Führer's adviser on all operational questions—in a certain sense the Chief of the General Staff of the Armed Forces. The task of this Chief of the General Staff, in all countries in which this arrangement is known, is not that of giving orders but of advising, assisting, and carrying out. This goes to show that Jodl's position has frequently been misunderstood during the course of this Trial.

(1) He was not Keitel's Chief of Staff, but the chief of the most important department of the OKW, though he had nothing to do with the other departments and sections of the OKW.

Here I have to make an interpolation in deviation from my manuscript. He was also not Keitel's deputy. In Berlin Keitel was represented by the senior departmental chief, and that was Admiral Canaris. At the Führer's headquarters there was only the Armed Forces Operations Staff, for whom Jodl reported directly to the Führer. He had nothing to do with the other sections of the OKW.

(2) It is also a mistake that Jodl is designated by the Prosecution as the commander of one campaign or another. He had no power of command, let alone command of an army.

(3) It was equally wrong when it was repeatedly said that Warlimont was present at the meeting of 23 May 1939 as Jodl's deputy or assistant. Warlimont was in the OKW at the time; Jodl had left the OKW in October 1938 and had nothing more to do with Warlimont in May 1939.

What is indicated by all this with reference to Jodl's responsibility for the real or alleged wars of aggression? In general, one can only be made responsible for what one does criminally when one should not do it, and for what one has criminally neglected to do when one ought to have done it. What an officer or an official has or has not got to do is a question of competence. So this is where the problem of competence assumes its importance for us. Let us look at it more closely:

Jodl is accused of having planned and prepared certain wars which were breaches of international law. This reproach would be justified only if it was within his competence to examine, before he carried out his task, the legality of the war which might be waged, and to make his co-operation dependent on this decision. This must be very definitely contested. Whether or not to wage a war is a political question and is the politician's concern. The question of how to wage war is the only question concerning the Armed Forces. The Armed Forces can suggest that the war is, in view of the opponent's strength, too risky, or that the war

cannot be waged at a particular season, but the final decision rests with the politicians.

I could, to be sure, imagine that the Chief of the Armed Forces Operations Staff might become at least morally guilty of complicity in a war of aggression if he had incited the decisive quarters to bring about a war, or if, drawing attention to military superiority, he had advised the political leadership to exploit the propitious moment in order to carry out extensive plans of conquest. In such a case one could call him an accomplice, because he, over and above his military task, intervened in politics and provoked the decision for war. But if he plans and carries out the plan of a possible war, that is, in case the political leadership decides on war, he does nothing but his evident duty.

One should consider the extraordinary consequences which would arise from a different conception: The competent authority would declare war, and the Chief of the General Staff, who regards this war as contrary to international law, would fail to co-operate. Or the Chief of General Staff happens to be of the same opinion as the head of the State, but one of the army commanders has objections and refuses to march, while another one has doubts and has to think it over first. Can war be waged at all in this case, be it a war of defense or a war of aggression?

Such a conception of law would, in the future, lead to highly problematical results. The Security Council of the Allied Nations has decided to set up a World Police with the task of protecting world peace against aggression. At the same time the creation of a World General Staff has been considered which would have to plan and carry out this punitive war. Now let us imagine that the Security Council decides on a punitive war and the Chief of the General Staff replies that in his opinion there is no aggression. Would not the whole security apparatus in this case depend on the subjective opinion of a single nonpolitical person, that is, would it not in fact become illusory?

I need only add one more thing in passing: If this opinion should prevail, what efficient man would still decide to become a regular officer, if, on reaching a high position, he would risk being put on trial for crimes against the peace in case of defeat?

Moreover, for that matter, it is wrong, even if only for practical reasons, to impose on a general the duty of examining the legality of a war. The general will only seldom be in a position to judge whether the state to be attacked by him has broken its neutrality or whether it threatens to attack or not. And, furthermore, the conception of a war of aggression and of a war contrary to law is, as Professor Jahrreiss has explained, still completely unclarified and contested among scholars of international law. Yet a

general, who lives far apart from all these considerations, is expected to recognize that it is his duty to carry out a legal investigation?

But even if he had recognized the war as illegal, just let us imagine the really tragic position in which this general would find himself. On one hand there is his obvious duty toward his own country, which he has taken an oath as a soldier to fulfill, on the other side this obligation not to support any war of aggression, a duty which forces him to commit high treason and desertion, and to break his oath. One way or the other he will become a martyr.

The truth is this: As long as there is no superstate authority which impartially establishes whether, in a concrete case, such a duty does exist for the individual, and as long as there is no superstate authority which will protect against punishment for high treason and desertion people who fulfill this duty, an officer cannot be held criminally responsible for a breach of the peace. Whatever the circumstances, one thing must be pointed out: On the one hand the Prosecution reproaches the generals for not having been simply soldiers, but also politicians; on the other hand, it demands of them that they should remonstrate against the political leadership and sabotage its resolutions—in short, that they should not simply be soldiers, but politicians.

The Prosecution do actually acknowledge this up to a certain point. They say that it is not intended to punish the generals for having waged war—for this is their task—but they are reproached for having caused the war.

And the second argument, which often recurs, is that without the generals' help, Hitler could not have waged these wars, and that makes them coresponsible.

This argument contradicts itself. For the help which the generals gave Hitler consisted in planning and carrying out military operations, that is, in waging the war, for which, in the opinion also of the Prosecution, they cannot be criminally charged. Let us examine this more closely: Jodl is said to have caused wars. It has been sufficiently proved that he played absolutely no part in the launching of the Polish campaign. And it was this very campaign which, with strategic necessity, brought about all the further happenings.

Actually one need not examine the origins of the individual wars at all to be able to say, in view of all that we know now, that in this assertion there lies an enormous overestimation of Jodl's power in the Hitler State. The decision to start the war was far removed from his influence. On this very point advice from the generals was not heard. At most, purely military considerations could be submitted. And the Norwegian campaign was the only one of all these

campaigns which a military man advised Hitler to carry out for reasons of strategic necessity. But that was not Jodl. As regards the latter, the assertion that he caused wars would be founded on nothing. Let the transcript, the memorandum for his speech, or any other document be shown according to which Jodl at any time incited people to war, or even only recommended the decision to start a war. His Gauleiter speech is submitted against him. In it Jodl shows—looking back—how the events developed one out of the other. For instance, how the Austrian Anschluss facilitated action against Czechoslovakia, and how the occupation of Czechoslovakia facilitated the action against Poland. But it is bad psychology to deduce from this that a general plan for all this existed from the first. If I buy a book which draws my attention to another one, and I then buy the latter as well, does it follow that at the time of the first purchase I already had the intention of getting the second one as well? If Hitler had extensive plans right from the start, Jodl did not know of them, let alone consent to them. His purely defensive deployment plan of 1938 already proves that by itself alone. Every time a campaign had been resolved upon, he did indeed do his bit to carry it out successfully. It is this supporting activity which is the object of the second of the arguments mentioned earlier.

It is true that without his generals Hitler could not have waged the wars. But only a layman can construct a responsibility on that basis. If the generals do not do their job, there is no war. But one must add: If the infantryman does not march, if his rifle does not fire, if he has nothing to clothe himself with and nothing to eat, there is no war. Is therefore the soldier, the gunsmith, the shoemaker, the farmer guilty of complicity in the war? The argument is based on a confusion between guilt and causation. All these persons, and many others too, effectively co-operated in the waging of the war. But can one therefore attribute any guilt to them? Does Henry Ford share in the responsibility for the thousands of accidents which his cars cause every year? If an affirmative answer is given to the question of causation, the question of guilt is still not answered. The Prosecution even refrains from putting this question.

The question of guilt will be discussed later. Here only the following is anticipated: Criminal participation in the planning and carrying out of a war of aggression presupposes two things:

(1) That the person involved knew that this war was an illegal war of aggression;

(2) that, by reason of this knowledge, it was his duty to refrain from co-operating in it.

The latter links up with what has already been mentioned: By virtue of his position it was Jodl's duty to make plans. Whether they were used or remained unused did not depend on him; it is characteristic that Jodl made a whole series of deployment plans which were never carried out. All general staff plans are only drawn up for an eventuality in case the political leadership should "press the button." Often they did it; often they did not. That was no longer a matter for the general staff officer.

The other presupposition for an accusation of guilt is that the person involved recognizes the war as a war of aggression. The question is, therefore, how these things appeared to him. How they were in reality interests the historian. The decisive question for the criminal lawyer is: What reports were submitted to Jodl about the conduct of the enemy? Could it be taken from these reports that the enemy was acting contrary to his neutrality; that he was preparing an attack on Germany, *et cetera*?

The decisive point is not whether these reports were true, but whether Jodl believed them to be true. I must stress this, because it has been said here at times: "The Tribunal will decide whether this was a war of aggression." That, of course, is true, because if the Court decides that it was not a war of aggression, no sentence for waging a war of aggression will be pronounced. But if the Court agrees that the war was, in fact, launched illegally, this does not in itself affirm the guilt of any person.

Someone who takes someone else's watch in the belief that it is his own is no thief. The guilt is lacking, for had it really been his own watch, he would not have been liable to punishment. So if Jodl believed that facts existed which, had they been true, would have made the war a legally admissible one, no sentence for breach of the peace can be pronounced.

Now, the Prosecution have repeatedly asked the generals the ironical question how it conformed with the code of honor of an officer to assist in a war which they had recognized to be illegal.

Let us assume that Jodl was sure that the war was illegal and that he had, for reasons of conscience, refused to collaborate. What difference would there then have been between him and a soldier who throws away his rifle in battle and retreats? Both of them would be liable to the death penalty for disobeying orders in war.

I know that the United States is generous enough to respect a soldier who, for religious reasons, refuses to take up arms, and not treat them as we do. But that applies only to religious scruples, and doubtless does not apply to a man who, owing to objections based on international law, does not co-operate in the war decided on by the political leadership. One would object that it is not his affair, not an affair of his conscience to examine the admissibility of the

war, but that this is the duty of the responsible state authorities. According to continental law, one would not even stop to consider such an excuse for refusing obedience.

Furthermore, I regard that ironical question to the generals merely as an attempt to humiliate them morally, but not as an accusation touching the subject of this Trial. The International Military Tribunal is not a court of honor which decides about dishonorable actions of the accused, but a criminal tribunal which has to judge certain actions which have been declared criminal by the Charter. It appears to me that the Prosecution forgot this fact on several occasions.

Before I pass on to the last point, the 11th of the Anglo-American trial brief, regarding crimes against the laws of war and humanity, I must make a few preliminary remarks.

First, a misunderstanding has to be cleared up. The Prosecution says that we wanted to wage a total war, thereby meaning a war which is waged by all methods, regardless of whether legal or illegal, in short, a war where the laws of war are ruthlessly violated. I was not a little surprised when I read this. We have indeed spoken enough about total war during the past 7 years, but we understood something quite different by it. We describe as total war a war waged with all the means of the spirit, of manpower, and of material, and mobilizing all the nation's forces; that is, a change-over of the entire economy to war needs, conscription of every single man capable of bearing arms, and of every single able-bodied woman, and if possible also of the young people. German soldiers from the East, who were familiar with Russia's example, jeered when we spoke of "total war"; had we not still three greengrocers on every street and tobacconists at every corner? That was no total war, they said, when so many workers were enrolled for nonmilitary purposes, when whole factories were still producing articles which had no connection with the war, and so forth. The war really had to be a total war, they said, if it was to be won, but that has nothing at all to do with contempt for the laws of war. I have never heard the word interpreted in this sense.

In the Anglo-American trial brief, Jodl is charged altogether with three documents (They concern the Commando Order and the capitulation of Leningrad. A fourth, 886-PS, was subsequently withdrawn by the Prosecution). The French and Russian prosecutors have, however, made further additions.

Again we must turn first to the question: Wherein lay Jodl's responsibility as Chief of the Armed Forces Operations Staff?

As we know, Jodl was primarily the adviser of the Führer with regard to the operational direction of the Armed Forces. This staff, however, had still other departments in addition to the operations departments of the three branches of the Armed Forces. When the operational tasks increased tremendously during the winter of 1941-42, a division of work was arranged between the Chief of the OKW and Jodl, according to which Jodl was only responsible for the military operations and the drawing up of the Armed Forces report, while the Chief of the OKW worked on all other matters in connection with the Quartermaster Department and the Organizational Department of the Armed Forces Operations Staff. It follows from all this that Jodl had nothing to do with prisoners of war, for which a special department in the OKW was responsible,

nor with the administration of the occupied territories, and therefore had nothing to do with the seizure of hostages and with deportations. I shall discuss UK-56 later. Jodl did not have anything to do with police tasks in the zone of operations or in the rear military zone. The Armed Forces Operations Staff had no authority to issue orders; nevertheless, there are many orders which Jodl signed either "by order" or with his own "J." We must now discuss these orders and the responsibility for them:

(1) There are orders which commence with the words "The Führer has ordered" and are signed by Jodl, or signed by Keitel and initialed by Jodl. These are orders which were given by the Führer orally, with the order to Jodl to draft them or put them into writing. With regard to responsibility, the same applies here fundamentally as applies to the orders signed by Hitler. For, in order to determine the responsibility, one must ask the question: What was the task of the person to whom the order was communicated? To what was he entitled and what was he obliged to do?

When the contents of the order were fixed in all their essential points, Jodl's task was only a formal one: he had to formulate what was already established, to give it the usual form of a military order, without being allowed to alter anything in its contents. It must not be overlooked that the criminality of an order can only lie in its contents and that it was precisely the contents which a subordinate had no influence on here. In this case the reason for immunity from punishment for the subordinate does not lie in the fact that he was ordered by his superior officer to act thus or thus, but in his lack of competence to alter anything in the given facts. The Prosecution sees in the formulating of the order criminal assistance, but I find it impossible to agree with this: In the first place because it is an order of the Führer's which creates law, so that criminal assistance is impossible; but even if this is not accepted, and a Führer's order is, on the contrary, considered as illegal and as punishable, one can still not close one's eyes to the fact that it was not Jodl's business to examine the legality, but only to draw up the order in a technically correct manner, that is, in accordance with the will of the author of this order. If he did this and only this, he has no responsibility. Here the superior essentially gave the order himself, and the subordinate just put it into words.

Naturally one will wish to make a difference between a clerk being given the job of writing down the order, and a senior general. Although the latter may not have the legal, he will however have the moral duty of expressing his scruples to his superior. Jodl actually always did this; this was the least of his various methods of preventing an illegal move, to which I shall refer later.

(2) Another very frequent case is where Jodl signed his order "I.A.," that is, "Im Auftrag" (by order), or initialed with his "J" orders signed by Keitel. Where does the responsibility lie here? We shall have to differentiate here between military and legal responsibility. From the military point of view, the superior, by whose order the order is signed, is responsible for it. Criminal law, however, lays the emphasis on the guilt, that is, it desires to establish the real culprit, not the person responsible from the military point of view. Since, however, the owner of the initial or the person signing "by order" is mostly the author of the document, it may happen that the latter is responsible from the point of view of criminal law, although he is not responsible in the military sense. For this reason it is necessary here to ascertain the actual share of both signatories in each case, and to determine culpability accordingly.

(3) Where Jodl did not sign his initial on the right below the last word of the document, but in the top right-hand corner of the first page, this means merely that the document was submitted to him for his information. It does not say whether he actually read it or approved it. Initials affixed in this manner do not, therefore, in themselves connect the person initialing the order with the contents from the point of view of criminal law.

(4) Jodl is also being charged with certain notes, partly so-called "memoranda," partly handwritten remarks which he wrote on drafts or other documents. What is the position with regard to the legal significance of such notes?

The following statement has already been made in "Case Green" in connection with the tentative proposal to manufacture an incident. A memorandum contains the deliberations, statements of fact, and opinions of the author or of other authorities, *et cetera*. It is not an order, but the data on the basis of which the superior can decide whether he will issue an order and what order. As long as such a memorandum remains a memorandum, it is a purely internal affair without any significance in international law, and can never be a violation of the laws and customs of war. This was explicitly laid down as the prerequisite for punishment in Article 6(b) of the Charter.

The same applies to marginal comments which so often occur in the files of the OKW: "Yes," "No," or "That is impossible," *et cetera*.

Admittedly, such memoranda or marginal comment may obtain legal significance. If a memorandum contains a proposal which is contrary to international law, and if it influences the superior in such a way that he issues an order with the same contents, this might possibly be regarded as participation in a violation of international law. If, however, no order is issued, or if an order is issued which is contrary to the proposal, then this proposal has remained

without effect, a purely internal matter, and unpunishable under all circumstances.

Furthermore, a memorandum or marginal comment may be a guide to the writer's sentiments. It may be gathered from it that he is inclined favorably toward international law or that he pays no heed whatsoever to considerations of international law. That may often be an important help in judging his character.

But we do not punish sentiments. Murderous intentions throw a bad light on the subject, but are not punishable. Caution must, of course, be exercised in the evaluation of such remarks. They are often thrown in thoughtlessly, without much aforethought, intended only for the reader in question.

If we take all this into account, several of the accusations which the prosecutors have raised against Jodl are eliminated in advance:

(1) His behavior on the matter of the low-flying airmen (Documents 731-PS, 735-PS). It was proposed to leave low-flying airmen who attacked the civilian population in a truly criminal manner, as happened again and again, to the lynch law of the people. Jodl was opposed to this idea, since it was bound to lead to the mass murder of all airmen who parachuted. Jodl raised objections in the form of marginal comments. He succeeded in sabotaging the order and the Armed Forces never issued it. This should be counted to Jodl's credit, but it is apparently held against him that he did not use words of moral indignation in declining the proposal. Under the conditions existing at the time, that might even have had the opposite effect. In any case there is no crime here.

(2) The Commissar Order—Document 884-PS. On this horrifying draft order—it is only a draft—which had been drawn up already prior to the outbreak of the Russian war, Jodl made the comment that it would provoke reprisals against our soldiers and that the order should preferably be drawn up in the form of a retaliatory measure; that is, one should wait and see what action the commissars really took, and then perhaps take countermeasures. Again he is not given credit for the fact that he opposed it, but he is accused of the manner in which he opposed it. From a legal point of view that is meaningless. Later Jodl had nothing more to do with this matter. He did not even receive any communication regarding the success of his protests.

(3) The Geneva Convention—Document D-606. In this case Jodl did not only submit a memorandum, but also a statement in great detail, to Hitler, as he wished under all circumstances to thwart the latter's plan of renouncing the Convention. There he mentions all the reasons against the renunciation, and reassures Hitler afterward by saying that it is possible to circumvent certain clauses even

without a renunciation of the Convention. This again is not an action contrary to international law, but shows at the most sentiments opposed to international law. More correctly, it appears to do so. In truth this was nothing but accepted tactics for dissuading Hitler from his infamous plan. The renunciation did not take place. By taking offense at the unethical argumentation, one is overlooking the fact that Jodl, after 5 years' experience, knew better than we do with what arguments it was possible to persuade his chief.

(4) The order regarding Leningrad—Document C-123. By letter of 7 October 1941 Jodl notified the Commander-in-Chief of the Army—and it is nothing but a notification—that Hitler had repeated an already previously issued order to the effect that an offer of capitulation was not to be accepted from either Leningrad or Moscow. Such an offer was, however, never made, and the order could not therefore have been carried out at all. The whole matter remained on paper, and, if only for that reason, does not constitute a violation of international law. This also can at the most be regarded as a guide to the author's sentiments, but has no place in an indictment as a punishable action. The following should, however, be added in explanation of the matter. In this letter Jodl explained the indisputable dilemma which had caused Hitler to issue this order:

(a) An offer of capitulation was expected to be simulated. Leningrad, in fact, was mined and would be defended to the last man, as the Russian radio had already announced. The bad experiences as a result of delayed-action mines, prepared according to plan, in Kiev, Odessa, and Kharkov, had taught the German Operations Staff what things they must beware of.

(b) In addition there was the great risk of an epidemic, which would also arise in case of a genuine capitulation. Even if for that reason alone, German troops must not be allowed to enter the town. Acceptance of a capitulation was thus entirely impracticable.

(c) Added to that was the utter impossibility that the German troops should feed a half-starved city population of millions. The railway tracks had not as yet been adapted to the width of the German gauge, and even supplies for the troops caused much worry. And finally there was the military danger to the German operations, of which Field Marshal Von Leeb had complained to the Defendant Keitel.

All this required steps to be taken to prevent the population of the towns from fleeing westward and southward through the German lines, and rather to make escape to the East possible for them, indeed, even to encourage it. Hence the directive to leave gaps in the front lines in the East.

The fact that Hitler let it be seen how he intended to utilize the military situation of constraint for the benefit of his Eastern plans lies outside the military considerations. That has nothing to do with the order itself. The only question is whether the order was inevitable from a military point of view, and this in fact it was for the afore-mentioned reasons. Whether or not the order was given anew by Jodl could not alter the situation in any way.

I shall now discuss individual war crimes of which Jodl has been accused:

(a) The Commando Order.

Two orders of 18 October 1942, which were drawn up word for word by Hitler and signed by him, have played a special part in this Trial: the so-called Commando Order to the troops, Document 498-PS, and the explanatory order pertaining thereto given to the commanders, Document 503-PS.

According to their substance these orders lie outside Jodl's sphere. That Jodl had anything to do with the matter at all was due to a special reason: The orders are directives for the execution of an order which had been issued by Hitler 11 days previously, which had also been drawn up by him personally and attached to the Wehrmacht communiqué of 7 October 1942. Jodl composed this communiqué as usual, including the supplement regarding the previous history of the order which Hitler afterward ordered to be added at the end of the communiqué. Hitler therefore requested him to work out drafts for the executive order. Jodl did not do so, nor did he submit to Hitler a report which his staff had drawn up on their own initiative. On the contrary, he had Hitler, with whom his relations were very strained at that time, informed that he was not in a position to comply with the request. Hitler then drew up the two orders himself.

Jodl is now accused of two things: He distributed the orders drawn up by Hitler through official channels, and he furnished the second, the explanatory order, to the commanders with a special directive for secrecy.

The order arose from Hitler's excitement about two kinds of intensified warfare which made their appearance about the same time, in the autumn of 1942. One was the fatal efficiency of excellently equipped sabotage detachments which landed by sea or were dropped from the air. The other one was exceptional savagery in the fighting methods of enemies who acted singly or in small groups.

Jodl has described here how this savagery appeared from the messages and photographs of the troops. Experience showed that these methods, which violated all military ethics, were encountered especially among sabotage detachments. Hitler wished to counteract these unsoldierly methods and to stop the sabotage activity which

was so dangerous to the German war effort, but he knew that sabotage could not be objected to on grounds of international law if carried out by regular soldiers. Hitler's first order, the one contained in the Wehrmacht communiqué of 7 October 1942, is therefore quite simply explained: No mercy will be shown to enemy soldiers who appear in sabotage detachments and behave "like bandits," that is, who place themselves outside the military code by their method of fighting.

The implementing directives should have defined the standard of unsoldierly conduct; Hitler's implementing directive did not contain this definition; in the decisive points it was not definite at all, and this made it possible to apply the order in the sense of its undoubtedly justified fundamental idea, or not to apply it where there was the slightest doubt as to whether it was a case of "bandits."

After all the reports which had been received about the enemy's behavior, Jodl considered the basic principles of Hitler's directive in the Wehrmacht communiqué of 7 October 1942 understandable, and thought that the directives given by Hitler in the Commando Order of 18 October 1942, which were in some points not clear, were in part admissible from the point of view of international law, and in part perhaps questionable from the same point of view. He says that he knows no more exactly now than he did then whether and to what extent these directives were contrary to international law. He says that one thing only was certain, namely, that the indefinite wording of the order made it possible for the commanders to apply the order only against people who had clearly placed themselves outside the bounds of soldierly behavior.

Jodl hoped that this would be the method applied and, as far as he could, he promoted it, as is proved by the evidence. He used all his power to help ensure that the practical application of the Commando Order was restricted to what was undoubtedly admissible. He took steps to insure, further, that the order would not be applied in large areas, that is, in the greater part of Italy, as soon as it was at all possible to wrest a local limitation from Hitler (Document 551-PS).

The directive for secrecy is interpreted as a sign of Jodl's consciousness of guilt. But this secrecy had cogent reasons of a different nature. The enemy had to be prevented, as far as possible, from learning what serious damage was caused by the sabotage detachments which were operating in a bandit-like manner. Hence the special directive for secrecy only in the order (Document 503-PS) which gives information about the damage, while the main order was known to the whole world through the Wehrmacht communiqué. There was actually also a second reason for Jodl's imposition of

special secrecy on the explanatory order. He did not wish to see circulated the final decree, according to which captured Commando personnel were to be shot after interrogation. It revolted him as a human being to exclude unsoldierly fighters from the protection of the Geneva Convention, whether such a course was admissible or not according to international law. He hoped that the commanders would find ways of preventing inhuman acts in individual cases by means of a sound interpretation, and unauthorized persons were not to have knowledge of the decree.

The fundamental idea, which it was not necessary to exceed in practice, conformed to international law, which is only intended to protect men who are fighting as soldiers. This is, after all, the tendency of all the rules of war, which presuppose chivalrous combat. Something had indeed to be done to turn the use of such wild methods into a hazardous operation for the enemy. Nothing could be said against sabotage detachments which fought in a soldierly way. The enemy had only to desist from those methods which were in radical contradiction to international law.

The following must also be stressed: The transmission of this order does not prove responsibility for its contents. This is not like other cases where Jodl advised or drew up the order. On the contrary, he refused to draw it up. He merely distributed it, as instructed, through ordinary official channels. However, he is guiltless, not because—or rather, not only because—he was ordered to pass it on, but because he had no right to interfere with the order which was to be passed on. It was outside his jurisdiction, outside his rights, to examine it. His activity was purely technical, independent of the contents of the document. In theory he was not even obliged to read it. Let us assume that, after drawing up the order, Hitler told some lieutenant to telephone it to the commander-in-chief. Would it then have been the lieutenant's right and duty also to examine the contents of the document with regard to its legal admissibility and to announce afterward: "I will not do this," or "I shall have to consult the Hague Convention on Land Warfare first to see if I am allowed to do it"? The most grotesque consequences would ensue. And in this case the general is nothing more than a messenger who passes on what has been handed to him. Jodl's answer to my question as to what would have happened if he had refused to pass it on, is characteristic of the military interpretation of the situation: "In that case I would have been arrested immediately—and quite rightly so."

(b) Antipartisan combat. With regard to the war against partisan bands one might place charges against Jodl in only two cases . . .

GENERAL R. A. RUDENKO (Chief Prosecutor for the U.S.S.R.): Mr. President, the defense counsel names "bands" a patriotic movement comprising millions of patriots fighting against the German Fascist invaders. I consider that such an expression used by the lawyer should be considered as an insult to the partisans, who took a large part in defeating the Hitlerite invaders, and I protest against it.

THE PRESIDENT: The objection seems to be based upon some question of a Russian word which, of course, I don't understand. I understand that there is no objection to the English word "partisan." I don't know what the German word is. But there doesn't seem to be anything for the Tribunal to do about it.

DR. EXNER: Mr. President, no one on our side doubts that hundreds of thousands or millions of true patriots were among the so-called "bands." I am using the word because it was the expression used officially in German orders. They mention "rules regarding bands" (Bandenvorschriften). We do not use the word "bands" in any derogatory sense. It is no discrimination when we speak of a "band," or there need be no discrimination in doing so.

THE PRESIDENT: Is there a different German word for the English "bandit" and the English word "partisan"?

DR. EXNER: Yes. We, too, use the word "partisan." For us that is a foreign word, but we also use it. And then we speak of "bands," but not necessarily in a bad sense; and also of bandits, and these, of course, are criminals.

THE PRESIDENT: Why don't you confine yourself to the use of the word "partisan"?

DR. EXNER: I can certainly just as well use the word "partisan," Mr. President. I have merely used "band" because we have the "rules regarding bands." That is the official expression which had been used, but I have no objection to using the word "partisan."

THE PRESIDENT: If you are quoting an order, you must quote the order in the words of the order, no doubt.

DR. EXNER: Very well; then partisan warfare.

As far as partisan warfare is concerned, charges could be made against Jodl only in two cases:

(1) If he had permitted this warfare to take place in a disorderly and "chaotic" manner, as one witness has asserted, or (2) if he had issued combat directions, and if these had been contrary to international law.

But neither of the two is the case; Jodl was not personally responsible for this matter, but he was obliged to take an interest in the partisans when their number reached proportions which were beginning to interfere with the military operations. In 1942 he issued a directive regarding bands which was replaced by a second one in 1944. Therefore it cannot be said that no rules existed for this form of combat.

Nor can Jodl be reproached on the grounds of the second point. Although Hitler wished to have a type of warfare waged against these dangerous opponents which hardly took ethics and international law into account, Jodl—without his knowledge—issued a pamphlet about the combating of partisans which cannot be attacked legally. He went so far as to have partisans in civilian clothing treated as prisoners of war and to permit the burning down of villages to be carried out only on the orders of a divisional commander; this was intended to, and successfully did, prevent violations of Article 50 of the Hague Convention on Land Warfare (I refer to Document RF-665, Document Book 2, Jodl-44).

Jodl cannot be reproached, however, if the combating of partisans nevertheless degenerated badly. It is not a matter for the Chief of the Armed Forces Operations Staff to supervise the observance of his directions in four theaters of war.

(c) Burning down of houses in Norway (Document 754-PS). The Prosecution have accused Jodl during cross-examination of having ordered the destruction of Norwegian villages. This accusation refers to the teletype of 28 October 1944 to the command of the 20th Mountain Army. The Prosecution have a false idea of the role which Jodl had to play.

The military position then was as follows: The Germans were retreating to the not yet completed Lyngen line, and there was danger that the Red Army would continue to follow up during the winter and would destroy the much weaker German units if, while advancing along Reich Road 50, the only one that could be used at that time of the year, they found the homes and the population with their local knowledge available. Without these billets and the support from the population the Russian advance was impossible. The evacuation of the population and the destruction of the houses would eliminate the danger and, over and above this, it would make partisan warfare against the German troops impossible. The evacuation of the population was also necessary in the interests of the population itself.

In this situation Hitler issued, not on the advice of the soldiers but on that of the Reich commissioner for the occupied Norwegian territories, the decree which Jodl reported, "by order," to the command of the 20th Mountain Army through the proper channels

with all Hitler's military and ethical considerations. One can really hear Hitler's radical way of speaking.

Jodl who, as a result of a telephone conversation with the staff of General Rendulic, knew that the mountain troops did not need such a far-reaching military order and therefore did not want it, was against this order and—when he could not prevent it—sought for a solution which in practice led to the desired result. He wanted the order to be carried out by the troops only insofar as was absolutely militarily essential and in accordance with what was permissible under the Hague Convention on Land Warfare (Article 23g). He knew that his brother, who was in command in the North, thought exactly as he did; he knew the soldierly spirit of the mountain troops as a whole, and he knew in advance in this particular case that this order went too far for the troops. So that it should be understood correctly by everyone right from the start, he not only explained clearly that it was a "Führer order" in the introduction to the teletype message—the second paragraph expressly uses these words—but he let the soldiers know that the Führer had issued this order on the suggestion of the Reich commissioner and not on the suggestion of the military. Thus they were fully informed and they acted accordingly. No militarily unjustified demolitions occurred. Thus, among others, the three towns of Kirkenes, Hammerfest, and Alta were not destroyed. According to the literal application of the order they would have had to be destroyed.

(d) Deportation of the Jews from Denmark (Document UK-56): The Prosecution wants to make Jodl responsible for the deportation of the Jews from Denmark. It bases this accusation on a teletype message which Jodl sent "by order" to the commander of the German troops in Denmark. It is particularly difficult to understand this accusation by the Prosecution; for the different documents submitted by the Prosecution absolutely prove that the deportation of the Jews from Denmark was decided upon by Hitler on a suggestion from Dr. Best, therefore on a suggestion from the civil authorities and over the objections of the commander of the German troops, and that this task was assigned to the Reichsführer SS. The OKW was concerned with the whole affair only because at that time a military state of emergency existed in Denmark, so that the commander of the German troops, as the highest executive authority in the country, had to be informed by his superior authority of the action ordered by Hitler and assigned to Himmler, in order to prevent friction between the German authorities in Denmark.

On 20 September 1943 Keitel and Jodl had received the first intimation of the discussions between Hitler, the Foreign Office, and Himmler, in a teletype message from the German commander.

Jodl had only one wish—to keep the Armed Forces out of this affair. His temperamental note on General Von Hanneken's teletype of 3 October 1943 (Document D-647) also shows this. There he wrote: "... is a matter of complete indifference to us," namely, whether the Reichsführer SS published the figure of the Jews arrested or not. It shows only too well that this has nothing at all to do with moral considerations, either in a positive or a negative sense.

The whole thing had nothing to do with the Armed Forces. But difficulties could arise as a result of Himmler's action, as the Armed Forces were after all responsible for peace and order in Denmark. Such difficulties had to be headed off. The Wehrmacht could not alter the decision taken by Hitler in this police matter, and could not have altered it even if it had been competent to deal with this question.

Jodl simply informed the commander by the teletype message (Document UK-56) of the decision Hitler had taken in this police matter. And the Reichsführer SS, the Foreign Office, and the Commander-in-Chief of the Reserve Army were simultaneously informed by Jodl that he had let the commander in Denmark know. Now it was a clear case and all friction between German offices was excluded. That was all the OKW had to see to.

One cannot say that the information which Jodl gave made the execution of the order, which Hitler had decided upon apart from the Wehrmacht, any easier. It is clear to anyone who knows but a little of Hitler's position of power that friction between German offices would in no way have prevented the thing being carried out, but would at most only have delayed it, and would certainly not have made it pleasanter for the persons affected.

May it please the Tribunal, there is an old saying in criminal law, a saying which I always find cited in foreign decisions too, that *actus non facit reum nisi mens sit rea.* Two things go to make a crime; the *actus,* the objective side of the crime, the deed, and the *mens rea,* the subjective side or guilt. The Prosecution is involved in an odd contradiction there; in some cases they stress the *mens rea* and fail to see that the criminal *actus* is lacking: I have shown this in the case of the above-mentioned marginal comments, which do not represent any illegal actions, but at most could allow one to infer an illegal frame of mind. In other cases the Prosecution look only at the *actus,* but does not ask whether a *mens rea* is also present. This second mistake is more dangerous, as here the outside of the crime is visible to everyone and it is often only a delicate psychological examination that can lead to the conclusion that there is no *mens rea* which corresponds to the *actus.* We will come to speak of this further on.

With regard to the action, what is meant is behavior declared criminal by the Charter. This behavior can consist of positive action or of omission. If a father sees his child drowning while bathing and does nothing to save him although he could have done so, we declare him guilty either of murder or of killing by negligence, according to the degree of his guilt. This commission of a crime by omission is important in this Trial too, for the Prosecution repeatedly stress that Jodl was present at this or that meeting, at this or that speech. On one single page of the Anglo-American trial brief the phrase "Jodl was present at..." occurs six times. What does this mean legally? Being present at and listening to things can be of great importance with regard to the evaluation of a later deed, for the doer cannot excuse himself by saying "I didn't know" if he participated in the discussion of a plan. But mere presence does not in itself make one an accomplice. According to British law, even actual presence when a crime is committed makes one an accomplice only if encouragement is added. The same applies in German law. But where this is not involved, to lay stress on a person's presence when a criminal intention was discussed can only amount to a reproach that "he knew about and tolerated it."

Today we often hear this reproach of having tolerated crimes. Not only in this court. The whole German people are reproached for having tolerated a criminal regime and the annihilation of millions of Jews. Undoubtedly a crime can also be committed by tolerating things. But to make it a serious criminal charge, that is, one of intentional killing, two prerequisites must be fulfilled: 1) The subjective side: The perpetrator must have known that the victim would meet his death if he did not intervene; 2) he must have been in duty bound and able to prevent this death.

Mr. President, would this not be a convenient time to adjourn?

THE PRESIDENT: Yes.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

MARSHAL (Lieutenant Colonel James R. Gifford): May it please the Tribunal, the Defendant Hess is absent.

DR. FRANZ EXNER: We are dealing with crimes which were through toleration committed. As far as Jodl is concerned, the following applies: What an officer or official is legally bound to do or to prevent depends on the regulations governing his jurisdiction, and we know how strictly Hitler insisted on their being adhered to, how sharply he managed to demarcate the spheres of action of the political and military leadership, the military and the SS. This indeed was the reason why Jodl took every opportunity to oppose the plans for extending the SS. For one thing was clear: Once something fell into the sphere of the SS, the Armed Forces lost their right to have any say in it. It does not therefore mean much, for instance, that Jodl was present at a discussion between Hitler and Dr. Best, at which one of the things discussed was terrorism in Denmark and the way to fight it (RF-90). The so-called "counter-murders," if such were really discussed, were not heard by Jodl—he was not present throughout the session. His presence at this session does not mean much, for the whole matter concerned occupied territory and did not concern the Chief of the Armed Forces Operations Staff, who was brought into this meeting because of other matters discussed there. Thus, even if Jodl had heard more drastic things at that time than he actually did, any interference would have been out of the question and would have been rejected at once.

The reproach of having tolerated things also assumes that the possibility existed of preventing the crime. In the case of Jodl we are mostly concerned with Führer orders which it is said he should have prevented. But enough has already been said here about how matters stood with regard to influencing Hitler's decisions. As long as his decision had not yet been made, good arguments could, under favorable circumstances, still impress him; but once his decision was made, it was irrevocable. Any opinion to the contrary is simply based on ignorance of the facts.

In the course of time Jodl did actually develop other methods for influencing decisions of the Führer, or at least for influencing their practical effects. He used dilatory tactics; either he waited until the matter would perhaps be forgotten, or else he created difficulties and raised objections, using a type of counterargument adapted to Hitler's way of thinking—the order regarding commissars is a case in point—or he sent for opinions from various departments in order to gain time—as in the case of low-flying airmen. If the order had to be published, he often inserted in it on

whose application the order had been issued, in order to show the commanders-in-chief that he did not identify himself with this matter—as in the case of the Norwegian villages. Or he tried to influence the practical application by overlooking failure to carry out the order—as in the case of the Commando Order, *et cetera.* But if one thinks that he could simply have refused to draft an order which was contrary to ethics, one has only to look at the Commando Order, where this method had exactly the opposite effect to what was intended.

I now come to the second part of the Latin saying I quoted: The deed in itself is no crime—*nisi sit mens rea.*

This is the last point in my statement and is at the same time the most difficult and the most important in a modern criminal trial.

"No guilt, no punishment"; this principle has been accepted in all civilized states since the Renaissance, even though different views as to the nature of guilt may exist in some places.

May I first make a short comparison between the Anglo-American legal view and that held on the Continent, for example in Germany. It is important when judging some cases.

I have already had to touch on an important point of the question of guilt when discussing aggressive wars. If one really seeks to make Jodl, the General Staff officer, responsible for waging these wars, it is at any rate of decisive importance to know how he viewed the whole state of affairs. If he believed, on the basis of the reports he received, that facts existed which—if they were true—justified the waging of war, then Jodl cannot be reproached with having knowingly waged an unlawful war. This applies even if his assumption was based on mistakes. Such mistakes exclude design. In a decision, *Green v. Tolson,* it is stated:

> "In common law a reasonable belief in the existence of circumstances which, if true, would make the act for which a prisoner is indicted an innocent act, has always been held to be a good defense."

In another decision *Regina v. Prince* it is stated:

> "It seems to me to follow that the maxim as to *mens rea* applies whenever the facts which are present in the prisoner's mind and which he has reasonable ground to believe and does believe to be the facts, would, if true, make his act no criminal offense at all."

In a third case, *Commonwealth v. Pressby* (an American decision) a good example is given:

A sentry shoots at his commanding officer who is approaching him, in the belief that he is an enemy. This last example is closely related to the wars of aggression which are to be judged here.

As a rule, ignorance of criminal law is no excuse under British law. However, the following principle is worthy of note:

"If, however, there is a doubt as to a question of law, a person cannot be convicted and subjected to imprisonment if he has merely acted on a mistaken view as to the law."

Naturally a mistake about preliminary questions in civil law can also exclude criminal intention:

"If a person takes what he believes to be his own, it is impossible to say that he is guilty of felony."

This rule could also be significant in our field, too, for mistakes regarding the regulations of international law.

Yet in this doctrine of mistakes I see a certain difference between it and German law, for in German law any mistake, even if resulting from negligence, excludes intention. In British law this seems to apply only to "reasonable" mistakes "unaccompanied by negligence." If that sentry had shot too soon, without sufficient investigation, he would indisputably under German law only have to be sentenced for killing by negligence. In England and America, if I understand it correctly, this mistake by negligence would not be taken into consideration at all, and this soldier would have to expect a sentence for intention to kill. But this difference in the conceptions of law should not play any part in our case, for one can hardly reproach Jodl with having come to his interpretation of the situation on the basis of a hurried and careless examination of his reports.

There is one more point of divergence in the law.

I read in an English decision that intention and deed must coincide in order to constitute a crime, but we take a more precise view of this coincidence. According to German law, a person can be punished for intentional killing, only if he foresaw the fatal results and wished them. On the other hand in the decision already quoted in Regina v. Prince it is stated: "If a man strikes with a dangerous weapon, with intent to do grievous bodily harm, and kills, the result makes the crime murder. The prisoner has run the risk."

According to German law this man could be punished only for aggravated bodily injury, never for intentional killing (Paragraph 226 of the German Penal Code). That the "result," which may rest on chance, should turn the act into murder—is rejected by us as unjust.

I will not read what follows, in order to save time, and I wish to omit Paragraph 1, on Page 110.

Lastly, in a third point, which is of importance here, the views again agree. Every serious crime must be intentional, although the intent need not be linked with the consciousness of doing something criminal, but with the consciousness that it is not right to act in such a manner.

"To constitute a criminal act there must, as a general rule, be a criminal intent. The general doctrine is stated in Hale's *Pleas of the Crown* that 'where there is no will to commit an offense, there can be no transgression.' "

In German law it has been argued for a long time whether the perpetrator must know that he is acting in direct contravention of the law, or whether it is sufficient for him to know that he is doing something contrary to his duty. The prevailing opinion, which has also been taken over in the drafting of our German Penal Code, states: "The perpetrator must be conscious of acting against the law, or of acting wrongly in some other way, in a natural sense." I was greatly interested to find the same idea, expressed in almost the same words, in a British decision *Green v. Tolson:*

> "It must at least be the intention to do something wrong. That intention may belong to one or another of two classes. It may be to do a thing wrong in itself and apart from positive law, or it may be to do a thing merely prohibited by statute or by common law, or both elements of intention may coexist with respect to the same deed."

Thus, according to English law, knowledge that it is not allowed to act thus is one of the elements of intent:

> "There is a presumption that *mens rea,* an evil intention or a knowledge of the wrongfulness of the act, is an essential ingredient in every offense."

This decision quotes some exceptions to this principle, which do not interest us here. They concern bigamy and seduction, where positive provisions of statute law are involved, as well as certain offenses against public order, *et cetera.*

Our question now is: Was Jodl aware of wrongdoing when he prepared and passed on the various plans and orders of which he is accused today? According to my innermost conviction: No.

The only evidence which the Prosecution have produced is the reproach: Why, if he had a clear conscience, was he in so many cases so intent on observing strict secrecy? There is an answer to this: In military questions there are manifold reasons for not allowing certain things to become known. This was so before the war and all the more so during the war, and even now after the war deep secrecy shrouds the atom bomb, to cite an example. Such observance of secrecy need not be connected with a guilty conscience. And if Jodl says he had arranged that one of the two Commando Orders should—apart from other reasons—be kept secret because of its obnoxious final regulation, he did so, presumably, for the sake of the honor of the German Armed Forces, and certainly not because he thought that he himself was doing something wrong by passing on the order, an order which he had after all not drafted himself, and for which he was convinced he was not responsible.

This last fact must be stressed. It is of general importance. In all Jodl's military preparatory work, whether he was making plans

for wars, or drafts of orders, or memoranda, the point is not merely whether he knew that this war or that decree was contrary to law, but decisive is whether he knew that by his co-operation, by his actions, he was doing something wrong. That Jodl did not have a bad conscience seems to me to be clearly shown by the fact that before his capture he had 3 weeks in which to burn most of these documents but did not do so, because he was convinced that he had nothing to conceal.

When drawing up these orders, he was not conscious of wrongdoing. He could not be, if only for two reasons: On the one hand, because he felt himself bound by the Führer's orders, on the other hand, because—apart from a concrete order—he was convinced that in his position as Chief of the Armed Forces Operations Staff he was in duty bound to act in this way. Let us look into this more closely:

I will not speak any further about the order and its legal meaning. One point, however, appears to me to be in need of elucidation: Mr. Justice Jackson quoted Paragraph 47 of the German Military Penal Code to prove that according to German law an order by a superior officer does not excuse the subordinate.

Incidentally, it is striking that in the case of the conspiracy British-American law is brought in, whereas in the case of this order, German law is drawn on—in each case according to whichever is the less favorable to the defendant. I do not know, however, whether Mr. Jackson would have referred to Paragraph 47 of the Military Penal Code, if he had known how it was interpreted by the highest courts, and what the real legal situation in Germany was.

It is first of all necessary to note that at the beginning of Paragraph 47 there stands the principle: "Should, by the execution of an order in the course of duty, a criminal law be infringed, the superior officer issuing the order is alone responsible." And now comes the exception which practice has cut down to the absolute minimum for the sake of maintaining military discipline. It is based on the point of view that a subordinate is subject to punishment as a participant only if the order was not binding on him—for instance, because of its nature it did not come within the framework of Armed Forces' tasks—and if the subordinate was aware that the action ordered had a crime or an offense as its aim. The offense must thus be directly intended by the person issuing the order, and the subordinate must be certain of this. That he could and should have realized this is not sufficient. And, even if the subordinate is responsible, in a case of slight guilt punishment may be waived.

The whole ruling is very much contested, but one can see how the courts have limited its application in order to shield the obedient

soldier as much as possible. Actually, cases of this kind were very rarely punished. Jodl does not remember a single case in his 30 years of service.

I must insert something here, because a few days ago Mr. Jackson made a late presentation of a document which concerns this problem (3881-PS). These are statements made by Dr. Freisler, as President of the People's Court, during the trial of those who took part in the attempt on Hitler's life on the 20th of July 1944. Freisler was always considered in Germany as a caricature of a judge. His undignified shouting in that murder trial was reproduced here before us by the Prosecution a few months ago in a sound film. What this legal expert meant to say—as far as the meaning of his remarks, torn from the general context, can be understood—was: When an officer ordered a subordinate to give assistance in murdering Hitler, this order did not justify the one who obeyed.

Certainly, Freisler's authority is not required to establish this. If ever a military order was issued which was outside the competence of the Armed Forces and was, therefore, not binding and did not exculpate, it was the order to murder the head of these very Armed Forces. But how an order by some officer to murder the head of the state can be compared with the order of the head of the state to commit an act contrary to international law is incomprehensible to me. However, I will not dwell any longer on this.

It will not be possible to understand Jodl's position or form a correct judgment of his actions if we do not visualize clearly the two men who here confronted each other. It is very easy for the Prosecution. Were Hitler still alive, he, as the head of the major war criminals, would sit in the first place on the defendants' bench and would be considered as the prime agent and source of all the terrible things that have happened. Now that he is dead, his person is belittled when judging the other defendants, and their conduct is treated almost as if he had never existed at all. This despot, this infernal power, as Jodl called him, cannot be passed over as a negligible quantity when the question is to judge justly the commissions and omissions of his immediate entourage. During these months I have again and again been reminded of the combination of genius, madness, and crime which was once depicted by the discerning Cesaro Lombroso. In history it is success that has the last word on the worth and worthlessness of man. Therefore, history's verdict on Hitler will perhaps be a crushing one. But one must not forget his beginnings; when one compares Germany's position toward the end of 1932 with that at the end of 1938, one is not surprised at the incomparable prestige which he had at the very time when Jodl came into close contact with him.

Jodl now stood before this man. Jodl, an honest soldier, extraordinarily gifted, but never striving to be anything but a conscientious soldier; a sober realistic mind, ill-disposed toward all diplomacy, all political machinations, brought up in the ideals of the German officer corps—bravery, faithfulness, obedience—trained according to the 100-year-old tradition of the German General Staff, who knew only fulfillment of duty, selfless work, and ever more and more work.

That this man, working at Adolf Hitler's side, was bound to come under his influence is self-evident. One must consider the time at which this took place. There could of course be no relationship of mutual confidence, but Jodl was also not the man to submit without opposition. There were clashes and explosions enough. Jodl was regarded as the man who dared to oppose the Führer more than anybody else. He could, as Kesselring reported, stand up against him with a curtness which at times reached the limits of what is militarily permissible. For this very reason I do not believe that it is merely the receiving and obeying of commands which can make us appreciate fully Jodl's behavior during these years. It was much more the wider conception of the fulfillment of duty: Complete devotion to that which had been assigned to him as his task at a critical time. One should realize and appreciate the situation in which Jodl found himself.—His country's struggle for existence, the demands of a war which was becoming increasingly horrible, and at the same time the views of his Supreme Commander which disregarded all traditions about what was permissible and not permissible in a war. It was quite clear that Jodl was bound to come into conflict—into conflict with Hitler and into conflict with himself.

Permit me to make a comparison: You, Your Honors, as you have already informed us, feel yourselves bound by the Charter of this Tribunal. Perhaps some of you have been assailed by doubts as to whether all the conditions of this Charter conform to international law as at present understood and to the generally recognized principles of law. But you have rejected such doubts, since you, as judges, consider yourselves bound by the rules which your four governments have agreed upon.

Jodl, as a General Staff officer, may have felt himself bound in a similar way to support the orders of his Supreme Commander, even if doubts regarding their admissibility in international law may have assailed him here and there. But he considered himself bound by his office to draw up plans for war without examining whether and under what conditions they were carried out; he had to formulate and issue thousands of orders, even if he disagreed with some of them. Where neither remonstrances nor delaying

tactics had any effect, he had to submit. As a General Staff officer he had a purely auxiliary function. That he might be doing wrong while fulfilling this function according to the best of his knowledge and conscience never even occurred to him.

It is said now: Jodl should under no circumstances have taken any part in this or that affair. What should he have done? If one reproaches somebody with having acted in a certain way, then one must be in a position to state what action would have been right in that situation. It is now said that he should have resigned. This, of course, would have been an easy way out. That course could be taken in peacetime, but in wartime it was quite different.

Jodl tried repeatedly to get out of the OKW and to be ordered to the front, but in vain. Requests to be relieved of his post were altogether futile unless the Führer desired it, as in the case of Von Brauchitsch and Von Leeb. In wartime he strictly forbade his generals to apply for release. That was desertion he said. The private in the front line could not resign when he found things uncomfortable. The general, too, had to remain at his post. In 1944 this order was repeated in writing; it was still more peremptory and the reasons more potent. If a general wanted to quit for reasons of conscience, he was told that the Führer himself bore full and sole responsibility for his orders; all that the generals had to do was to be responsible for their strict execution. Resignations on such grounds were not soldier-like and would be criminal.

Therefore, Jodl could not resign. Should he perhaps have simulated illness? This also is desertion and in wartime a crime punishable by death. Is it possible seriously to expect an officer, brought up in the good old traditions, to betray his country in time of need like a coward—his country, to which he had devoted his whole life—which would mean that he would not be able to look any new recruit in the face? I do not believe so.

Thus, there was only a third way out: Murder and revolution. In peacetime this would have meant civil war—in wartime, the immediate collapse of the front and the end of the Reich. Should he then have cried: *Fiat justitia, pereat patria?*

It really appears that the Prosecution holds the view that such conduct could be demanded of the defendants. An astonishing idea! Whether murder and treason can ever be justified ethically had better be left to moralists and theologians. At all events, jurists cannot even discuss such an idea.

To be obliged on pain of punishment to murder the head of the state? A soldier should do that? And in wartime? Those who have committed such crimes have always been punished, but to punish them for not doing so would indeed be something new.

Naturally there are limits to legal obligations for jurists too; but in a state of conflict which offers only this kind of solution, the old saying applies: *Ultra posse nemo obligatur.*

Jodl was no rebel. His conscience told him: The fatherland is in need. Every man to his post! Jodl's place was at the head of the Armed Forces Operations Staff. He did not enter this post of his own free will; he did not keep it of his own free will. It was a hard duty. He fulfilled the task which this post imposed on him according to the best of his ability and conscience—up to the bitter end.

Your Honors. Allow me in conclusion to recall a personal reminiscence, which throws more light on Jodl's personality. I made his acquaintance about 20 years ago in the house of his uncle, the philosopher Friedrich Jodl, in Vienna. There I had a conversation with him on training for the career of an officer. The young captain spoke with such moral earnestness, and what he said was so far from anything that could be called militarism, that I have always retained it in my memory. I then lost all contact with him until last autumn, when I received the surprising summons to defend him here. My first thought was: "This gallant soldier must be helped." But I doubted whether I should undertake this, as I am not a professional attorney. But when I met him in the courthouse for the first time, he said something to me which swept away all my doubts: "Rest assured, Professor," he said, "if I felt a spark of guilt in me, I would not choose you as my defense counsel."

Your Honors, I believe that these are the words of a gentleman, not of a criminal. I ask that Generaloberst Alfred Jodl be acquitted.

THE PRESIDENT: I call on Dr. Steinbauer for the Defendant Seyss-Inquart.

DR. GUSTAV STEINBAUER (Counsel for the Defendant Seyss-Inquart): Mr. President, members of the Tribunal:

Nuremberg, the old, venerable, imperial city, which has given not only to the German nation but also to the world one of its most significant painters, Albrecht Dürer, an unsurpassed sculptor, Veit Stoss, and the Meistersinger Hans Sachs, has, in its ruined state become the stage for the greatest criminal trial which legal history knows. Not only has Nuremberg seen within its walls the pomp of the old emperors, but the rallies of the NSDAP also took place there, year after year, as a part of that propaganda machine which knew how to put into motion millions of people by a gigantic, but also diabolical stage management, with flags and standards, drums and fanfares under the slogan of equality of rights for Germany in order finally in its extravagant aims, to lead a nation which has given humanity so much that is good and beautiful to the verge of ruin.

We have heard the Indictment here which tries to prove in a comprehensive way that these men had conspired to conquer the peaceful world by waging wars of aggression. It was said that the waging of these wars not only violated the treaties which were supposed to prevent war and, furthermore, the rules for a humane conduct of the war but had also trodden under foot the basic rights of humanity in the most contemptible way. We saw for months how mountains of documents and a long chain of witnesses were supposed to confirm the Indictment and, on the other hand, how the Defense as keeper and servant of the law was striving to help the Tribunal discover the truth. But in the gallery the representatives from all parts of the world were seated, and only too often the whole world held its breath, when there was a break in the dark fog banks which again and again gave us a glimpse into the depths of unsuspected crimes. But outside, before the gates of the courthouse, stands a deeply moved German people, whose former leaders the defendants were. But regardless of how the trials will end, the Defense must be given credit for one thing—namely, that with regard to the question of the guilt of the German people, one will never again be able to talk about complicity or collective guilt—perhaps rather about collective disgrace, because they were German men under whose leadership crimes of the most horrible kind were committed. The curtain now rises on the final act of this world tragedy, to give a hearing once more to the Defense and then to pronounce a sentence which must not only conform to fundamental legal principles but also insure that crimes such as the Prosecution describe will forever be prevented.

On 20 November 1945, at the beginning of the Trial, the presiding judge stated that this Trial is of great importance for millions of people in the whole world. For this reason, he said, everybody participating in them has the solemn responsibility of fulfilling his duty without fear and without favor to anybody, and according to the principles of law and justice.

This duty was often an almost too heavy burden for the Defense Counsel, not because of the extent of the material for the Trial, not because of the abundance of new legal questions, but because things were revealed here which are so monstrous and abysmally degrading that a normal brain would reject even the possibility of their existence. In so saying I am not thinking of the prepared human skin, of the pieces of soap made out of human fat which were shown to us; I am not thinking of the systematic way in which millions of innocent people were tormented, tortured, beaten, shot, hanged, or gassed. No, I am thinking of the many touching individual pictures which have made the deepest impression on me personally and probably also on everyone else.

Once more, I hear the report of the village priest Mogon regarding the shooting of the hostages from Choisel Camp in Châteaubriant:

"My father, we have not your religious conviction, but we are united in the love for our native country. We wish to die so that the French people will be happier."

I visualize the march of the Jews from Dubno which slowly approaches the place of execution, how the individual victims help each other to undress, how the little boy persuades his parents to die bravely, and how they carry an old woman whose lameness prevents her from taking the few steps to the pit where the deadly bullet from the submachine gun awaits her. I once more hear the testimony of the French journalist, Marie Claude Vaillant-Couturier, who describes in deeply touching words how the sacred experiences of maternity and female honor were shamelessly trampled under foot in the extermination camp.

Auschwitz alone has swallowed up 3½ million people—men, women, and children. That is really the most terrible weapon of the Indictment, that the spirits of all these innocent victims stand beside the prosecutor, admonishing and demanding revenge. But I do not stand alone, either. The many innocent war victims on the German side, women and children who have fallen victim to the terror attacks which violated international law, in Freiburg, in Cologne, in Dresden, in Hamburg, Berlin, and Vienna, and in almost all other German cities, stand beside me. My comrades from the Armed Forces, who, as honest and decent soldiers, have sacrificed their lives for the fatherland by the hundred thousand, young and old, faithful to their oath of allegiance, also stand by my side.

But even if they did not exist, if the defendant stood quite alone before his judges, then even more is it my sworn duty as a lawyer to stand helpfully by his side and be his shield and defense, and, faced with the mass of the most terrible, incriminating documents, to call to you, Honorable Judges:

Do not judge in wrath, but as our Austrian poet Wildgans, who was a judge himself, wrote in the album of a young judge: "Suche das Edelreis, das unter Dornen blüht..." (Seek the precious shoot which grows among the thorns).

Before I consider the Indictment in its individual points, I should like to sketch in a few short words the personality of the defendant. The words in Schiller's tragedy "Wallenstein" apply to him, too: "Von der Parteien Hass und Gunst verzerrt, schwankt sein Charakterbild in der Geschichte" (Torn by the hatred and favoritism of parties, his character wavers irresolutely in history).

The Prosecution in the trial brief call him a cunning, coldly calculating, political opportunist who had a mission before his eyes. It said it is notoriously known that he misused his position as minister in order by his double-dealing to deliver Austria to the conspirators; he has committed atrocities in Poland and in the Netherlands in cold blood, and has trampled upon the rights of small nations to freedom of religious and political thought, regardless of constitutional obligations.

George S. Messersmith judges similarly in 1760-PS, when he says that according to reliable information he received, Dr. Seyss-Inquart, with whom he himself had little personal contact (the defendant denies ever having met Messersmith), was completely insincere in his dealings with his friend Chancellor Schuschnigg. Incidentally, the statement that Schuschnigg and Seyss-Inquart were friends is incorrect. Messersmith had left Vienna in the spring of 1937. As all witnesses testify, Dr. Schuschnigg had at that time just become acquainted with Seyss-Inquart. But Messersmith added in his own words that there is only one thing which may be said in favor of Seyss-Inquart at that time: That he may have believed the German protestations which were made to him that Austrian independence would be respected.

Mr. Gedye who was the Vienna correspondent of English and American newspapers for many years has also mentioned Seyss-Inquart in his book, Austria's Suicide, and has said about him: "He is a well brought up National Socialist, which is twice as disturbing, a young, intelligent lawyer of nice appearance and good manners, who clearly emphasized that he is opposed to the throwing of bombs and to noisy demonstrations, and who preaches in drawing rooms regarding the superiority of intellectual weapons over rough, material methods." Martin Fuchs, the author of the book quoted by me, A Pact with Hitler, says concerning the defendant, "Seyss-Inquart was known to the public as a National Socialist but also as a practicing Catholic and representative of an Austrian Nazi movement which was to keep Austria on the side of the Reich." In Austria they now condemn the defendant because he brought about the German entry by his telegram. Many a friend of mine who has returned from Dachau and Mauthausen has, therefore, reproached me for defending before the Tribunal the man who betrayed our country. Dutchmen whom I questioned concerning the personality of the defendant told me that the Dutch people hated him as Hitler's supreme representative in the country, especially since he had stated at the beginning of the occupation that he came as friend of the Dutch, and that he had deceived them in this respect.

I myself knew the defendant in Vienna only as a professional colleague. He was generally considered as an able and decent lawyer, and politically he was in close touch with Nationalist circles, without being outstanding in any particular manner. But in the many discussions which I have had with the defendant in the course of the trials, I have tried to form an exact picture of his personality. We often talked together about our families, our common experience at the front, especially in the Tyrolese mountains, where he was a brave and cautious company leader, and where he was wounded. He also liked to talk about daring excursions into the mountains, but he liked best to talk about music, and I have often thought that a man who could speak so sensitively about Bach, Mozart, Beethoven, and Bruckner cannot be a monster and above all not a cruel cold-blooded criminal, because love of nature and music can find an abode only in the heart of a good person.

His political program was the Anschluss idea, and, considering his origin, this is also easy to explain. His real home is the old mining town of Iglau, a German-speaking island in a Slavic sea. At an early age he became aware of the small-scale battle which was being waged by two hostile nations. Deeply moved, he has heard that last year the storm of the times swept over his home town too and that Iglau, which had been German for 800 years, has ceased to be German. Therefore, in judging the defendant, we should not forget that it is the Germanic borderlands that have always experienced the greatest national distress and held more

strongly and fervently to the idea of the great German fatherland than the nationals of the rest of the Reich, lulled into self-complacency born of self-confidence. Thus, it is no accident that leading men in the Anschluss movement, whose names stand out in my document book, came from the Sudetenland. Doctor Otto Bauer, the late leader of the Socialists, comes from Untertannowitz in Moravia—that is, from German Sudetenland.

The last time I saw the defendant was in the autumn of 1938, and I did not meet him again until I saw him here in prison. Therefore, I also asked one of his collaborators in Holland, who enjoys the respect of the Dutch, and who was no National Socialist, and who as a senior judge can be relied on, for an impartial opinion on the personality of Dr. Seyss-Inquart. He writes:

"In his work, his clear, keen thinking and the systematic manner in which he applied his many-sided talents in carrying out his duties struck me at once as his outstanding qualities.

"Unlike many of his equals he never dulled his sense of reality by fanatically preconceived notions but, as is fitting for a conscientious politician, always strove to approach things soberly and without prejudice and to see them as they really were. That also is why he developed the ability and inner composure to listen calmly to other people, including his subordinates, to deliberate with them and to yield to their opinion . . . Social life in his house was on a dignified and unusually high level. The atmosphere of the house revealed at once that the host was a man of culture. He knew no hate, and whenever he thought he saw hate approaching, he never answered with hate or revenge, but only with measures deemed appropriate for the prevailing situation.

"It is the great tragedy of his life and work that in the person of Hitler and several persons among those who were his closest co-workers, elements crossed his path which were stronger than he . . .

"As an intellectual, spiritually cultivated person he became immediately suspect to the main forces in the Party bureaucracy surrounding Hitler—Bormann and, in the SS administration, Himmler—although he wore the Golden Party Badge of Honor and occupied a high honorary rank in the SS. He continued to be the young Party member who came from the ranks of the intellectuals, who were always regarded with mistrust. For those elements he was too 'soft.' He nevertheless hoped that he might succeed in preventing independent sections in the Reich from working their way into his sphere of action, as he himself was gradually winning the Führer's confidence. As I have already said, his relation to the Führer was to be his fate.

"The Führer's amazing knowledge, his never-yielding, all-conquering energy and his outstanding successes in the field of domestic as well as foreign policy during the first years after the so-called seizure of power, drew Seyss-Inquart—as also happened to outstanding men in foreign

countries—under Hitler's influence. He became a loyal follower of Hitler and sincerely believed that in the latter love for the German people was the prime motive of his actions. He also believed—in any case for some time and during the extreme distress of the German people—that he must continue to cling to Hitler even though the recognition of his weaknesses and faults dawned upon him . . .

"However, I am firmly convinced that he, like so many of our people, was more an unwitting victim than a willing tool of the demoniacal power of Hitler . . ."

This is the opinion of an upright German judge.

The Prosecution base the Trial on the concept of conspiracy, in an endeavor thus to forge a chain around the defendants to link them all together in one common responsibility. My learned colleagues have already spoken extensively of the concept of conspiracy and its consequences in this Trial. To repeat these statements would be to carry coals to Newcastle. But because this is the leading theme of the Trial, and because it seeks to shift the responsibility for the world-shaking events to my client in particular, I should like to submit to the Court a few additional ideas on this subject.

When turning over the pages of history we often come across stories about men who combined to overthrow a ruler who was disliked, or a system that was hated, and to seize power for themselves. All these cases are lumped together under the general, all-embracing term "plots." In the book published in Paris, entitled *The Technique of the State Plot,* Malaparte, an Italian, attempted to describe the technical methods applied in plots and revolutions, from Catiline to Hitler and Mussolini. Even this survey of technique will be sufficient to show how unjustified it is to dub all these undertakings "plots," if it is intended to encompass within this term a definite concept such as is known in penal law. In any case it is not possible to classify all these things which in popular terminology are called "plots" under the heading of "conspiracy," as is done by the Prosecution. When Guy Fawkes and his companions at the time of James I tried to blow up the English Parliament in the so-called "Gunpowder Plot," perhaps this was a real conspiracy. To the present day the English people on the 5th of November of every year celebrate with fireworks and bonfires and the burning of a straw dummy the anniversary of the day which saw the fortunate prevention of the plot. It would be a mistake, however, to term any kind of co-operation for political aims a conspiracy, because—and it is particularly important to repeat and stress this—the vagueness of colloquial usage has always made it possible to use the word "conspiracy" when talking of political struggle, and thereby justify, because of the lack of adequate legal grounds, the destruction of political opponents.

Because in this Trial Holland is of particular interest to me, I wish to cite two illustrations from her history. The one is to recall Holland's fight for liberty against Philipp II, which two of our greatest poets—Goethe in Egmont and Schiller in his Geschichte des Abfalls der Vereinigten Niederlande—chose as subjects for their dramatic representations. Schiller writes about the heroic death of the two brave Dutchmen, Egmont and Horn. The insulted ruler had pronounced both counts guilty, because they had encouraged and assisted in the outrageous conspiracy of the Prince of Orange and because they had protected the confederate noblemen and had badly served the king and the Church in their governorships and other offices. Both were to be beheaded in public, their heads were to be mounted on spears and were not to be removed until so ordered by the Duke. All their possessions, feudal tenures and rights were confiscated by the Royal Treasury. The verdict was signed by the Duke alone and his secretary Pranz, and nobody took the trouble to obtain the consent of the rest of the criminal counsellors . . .

Two decades later during the well-known period of 1588 to 1598, the young Dutch State had been given its final safeguard, thanks to the joint leadership of the Republic by the Raadspensionaris Johann van Oldenbarnevelt as statesman and through Maurits van Oranje Nassau as Field Marshal. But the opposition between these two men was to lead to a tragic result. Both, the highly respected, aged Raadspensionaris Oldenbarnevelt, as well as his friend Hugo Grotius—the father of international law—were imprisoned because of conspiracy. While Grotius saved his life by escaping from his prison cell in a bookcase, Oldenbarnevelt's head fell because—so the verdict said—he had deeply afflicted the Church of God. The unity of the State, however, had been saved. Spain's dominion over the seas passed to the small Republic of Holland.

For the French prosecutor I should like to cite from the history of his country, France, an example of an obviously unjustified accusation of conspiracy. Louis XVI was accused of conspiring against the nation and was found guilty. Citizen De Sèze, on 26 December 1792, in the first year of the Republic, conducted his defense at the bar of the National Convention. His plea was probably one of the most moving ever delivered, a discourse in which the defense counsel had to deal at the same time with another danger of criminal jurisdiction arising from political causes or political passions—namely, against a violation of the legal principle *nullum crimen et nulla poena sine lege.* Undaunted and unafraid, he declared: "Where there is no law which can serve as a precept, and where there is no judge to pronounce the sentence, one should not have recourse to the general will. The general will as such cannot speak either about a man or about a fact. But if there is no law according to which one can judge, then it is also not possible to give judgment, and there can be no sentence."

We still find today this principle *nullum crimen nulla poena sine lege* firmly rooted in almost all law books. We find it in the German and in the Austrian Penal Code; and we also find it in French law, in Article 4 of the *code pénal,* which states: *"Nulle contravention, nul délit, nul crime, ne peuvent être punis de peines qui n'etaient pas prononcées par la loi avant qu'ils fussent commis."*

The American weekly *Time* wrote with justice in its 22d Number, 26 November 1945, in an article: "Whatever laws the Allies attempt to establish for the purpose of the Nuremberg Trial mostly did not yet exist at the time when these acts were committed. Since

the days of Cicero, a punishment *ex post facto* has been damned by the jurists."

That this principle has not lost any of its significance even today while this Trial is still going on, but on the contrary has kept its full meaning, is shown by the fact, and I should like to remind the French prosecutor again, that the French Constitution which was submitted to the National Assembly on 19 April 1946, establishes specifically as a statute of the Rights of Man in Article 10:

"The law has no retroactive force. No one can be convicted and punished, except according to the law which has been promulgated and made public before the deed which is to be punished. Every person accused is considered under reservation as innocent until he is declared guilty. No one can be punished twice for the same deed."

What is the Right of Man for the French, must necessarily be the Right of Man for the German.

This principle is not only rooted firmly in national law, but also in international law. When after the first World War the Allies demanded from the Netherlands the extradition of Emperor Wilhelm II who had found sanctuary there, the Dutch Government refused the surrender of the emperor with the following words:

"Article 227 of the Treaty of Versailles has come into force on 10 January 1920, and it does not appear on the list of punishable acts which are considered in Holland's laws or in the treaties which Holland concluded. This new crime was also not contemplated by the penal legislation of the countries which demand the extradition of the emperor."

A. Morignhac and E. Lemonon, Droit des gens et la guerre de 1914-18, Volume II, Page 572 express themselves similarly:

"Nul ne peut être puni autrement qu'en vertu d'une loi auparavant adoptée et publiée, pour cette raison, ce qu'on exige de la Hollande c'est de collaborer à un procès contraire à l'idée même de la justice."

When in the year 1935, the idea of analogy found its way into German criminal law, this innovation met with severe criticism in juristic circles also outside Germany. The second International Congress for Comparative Jurisprudence held in The Hague in the year 1937 formulated a resolution against analogy in criminal law. In this resolution, the congress expressed itself in favor of the principle *nulla poena sine lege.* (See: *Voeux et Résolutions du Deuxième Congrès International de Droit Comparé, La Haye, 4-11 Août 1937.)*

From the afore-mentioned statements it follows that it is legally inadmissible to apply principles in this Trial which lack a legal basis. Continental law does not know the concept of conspiracy. Austrian law, which could come into question as the national law for my client, does not know this concept either. There are at best very small similarities if we point out that the Explosives Law of 27 May 1885, Article 5, already declares the concerting together for the execution of a crime with explosives as punishable. Article 174, IC of the Penal Code makes theft a major crime if the thief commits

theft as a member of a gang which has banded together for the common commission of robbery. German law recognized the responsibility under the Penal Code for the act of another only as accomplice, instigator, and helper. Conditions in French law are similar, and to save time I refer to Articles 59, 60, 89, and Article 265 of the *Code Pénal.*

That this fact is not clear and at least dubious is also admitted by the reputed Russian teacher of international law, Professor A. N. Trainin in his book, *La responsabilité pénale des Hitlériens.* He states on Page 13:

> "The problems of international penal law have unfortunately been studied very little. There is lacking a theoretical, clear definition of the fundamental concept of 'international crime,' and a well-ordered system of this law still remains to be created."

According to the Prosecution, the aim or the means of the conspiracy are crimes against peace, against the rules of war, and against humanity. Professor Jahrreiss has already spoken extensively about the liability for punishment of individuals for the violation of international peace, and has described and given due recognition to the status of non-German international jurisprudence. But since jurists of German tongue have also concerned themselves with this question, I would like to make an additional remark.

The well-known Austrian scholar of international law, Alfred von Verdross, has established in his book *International Law:*

> "According to prevailing opinion, subjects of a crime under international law can only be states as well as other legal communities immediately subject to international law, but not individual persons . . ."

There would be only an international obligation of an individual person when international law itself would connect and order a state of facts with a consequence of injustice that these standards are applied immediately to the state of facts established by a person. Only by that will persons, who according to valid law are only subject to national civil and penal law, be bound as an exception by international law itself.

After these short supplementary statements of the legal bases of the Trial I turn to the Indictment, which accuses my client of having participated in the seizure and control in Austria as a conspirator, and of having committed war crimes and crimes against humanity in Poland and in the Netherlands.

Thus the first act takes place in Austria and the second in the Netherlands, after a short interlude in Poland.

East of Berchtesgaden lies Obersalzberg, at an altitude of 1,000 meters, a mountain at the northern base of the Hohen Göll, covered with meadows and forests, with scattered farm houses and with a wonderful view. Above the old road is the impressive Berghof which resulted from the reconstruction of the Wachenfeld House in 1936. It is here, not on the Rhine, not in the Teutoburg

Forest or on the shores of the North Sea, that Adolf Hitler established his residence when he desired relaxation far away from the Reich Chancellery.

Hidden by a small hill, the house of General Field Marshal Göring lies behind the corner of the house.

Adolf Hitler stands at the window of his country house, in deep thought, and gazes on the snow-covered mountains. The country which is protected by these mountains is Austria, his homeland. It is a German land, free and independent, and not subject to his will as is the Reich, whose absolute Führer he has become. When he wrote his lifework in the fortress of Landsberg, he wrote on the first page of his book: "German Austria must return to the great German fatherland." The shades of night rise slowly from the deep valleys and his thoughts glide over the mountains to the old imperial city on the Danube, Vienna, which he both loves and hates. It is the city of his joyless youth, a memory filled with want and misery. In his book *Mein Kampf*, he compares this city with Munich, and says about the latter: "Munich, a German city, how different from Vienna, I feel sick when I think of this racial Babylon."

And still, this city is the goal of his longing and he calls this same city in the March days of 1938 a pearl to which he will give the setting which its beauty deserves. On his table lies a book: *The History of the Germans in Austria.* Hitler read this book again and again; it is the history of his homeland, and we also will glance through it, as far as time permits. We read:

Austria was throughout many centuries one of the strongest pillars of German life. Its evolution, its rise, and its decline form a considerable part of German history. Austria was and is a piece of the German soul, of the German glory, and German suffering. Austria has received inestimable strength from the old Reich, but she herself has made a great and valuable contribution to the whole of German culture.

Her historical beginnings go back to the Frank, Charlemagne, who created the first "Ostmark," for the protection of the Reich against the East; she became a victim of the advance of the Magyars. The victory of the German King Otto I at Lechfeld in 955 is the hour of the rebirth of an Austria which now remains, under the rule of the Frankish house of the Babenbergs, the rampart against the East for almost three centuries. When the last of the Babenbergs fell in the fight, Austria came to the Alemanian house of the Hapsburgs which was to bear throughout centuries the imperial crown of the Holy Roman Empire of the German Nation and was to be by its predominant position the strongest shield of the Reich. The mystic strength of the Reich idea gives to Emperor Frederick III the unshakable belief in the universal future of the House of Austria: A u s t r i a e r i t i n o r b e u l t i m a. Under Maximilian Vienna becomes the main seat of humanism. Charles V goes on beyond the nation and is filled with the world-power idea of the medieval empire. The defense and liberation of Vienna in the year 1683 is a deed of the greatest significance. Under the ruling colors of the German king, Catholics and Protestants, sons of all German peoples, fight for the fate of the capital of Christianity. In the eighteenth century, in the clash of the territorial states against the Reich, princely dominions against the Reich concept, German dualism arises, which from now on was to be the tragic fate of the Reich and Austria—Austria and Prussia, Maria Theresa and Frederick the Great, the great empress and the great king. Through the conflict between the two powers the old Roman Empire of the German nation was destroyed in 1806.

The Reich died, but the concept of the Reich lived on. At Leipzig, in 1813, Prussians and Austrians fought shoulder to shoulder under Schwarzenberg, Scharnhorst, Gneisenau, and Blücher to free themselves from the yoke of the Corsican tyrant. On 11 January 1849 the deputies of all German states assembled at Frankfurt-am-Main for the constitutional assembly. The Austrian delegate, Bergassessor Karl Wagner from Styria in Austria, spoke at that time the memorable words:

> "Leave an opening for us so that we can enter; we shall come, unfortunately, perhaps not all of us. We, Austria's Germans, will come—how and when, who can tell? Who can read in the book of the future? But we shall come!"

The year before, in St. Paul's Church, where the delegates of all German lands and states had met, the poet Ludwig Uhland, as a deputy, spoke the memorable words:

> "It may well be that Austria's mission is to be a light for the East; but she has a higher, a nearer mission—to be the artery in the heart of Germany."

But on the battlefields of Königgrätz in 1866, the thousand years' mutual bond between Austria and Germany was broken and Austria was forced to leave the German federation.

How unsatisfactory the solution of the German question by Bismarck's forced exclusion of Austria from the union of German states was, was also recognized in the Reich, where Paul de Lagarde wrote in 1875:

> "But despite this, 1866 and the German Reich is an episode. Nikolsburg cannot separate what has been decided by geography and history to be together, if this being together will not be a union for a long time to come."

But before the double eagle of the Hapsburgs went down forever, Germans and Austrians once again fought shoulder to shoulder in 1914-18, with true Nibelung loyalty, for the freedom of the fatherland.

The common history of almost a thousand years, but above all the common language and origins, the same customs and mode of life—all combine to form the bond of unity between the two countries in the whole field of culture, of creative poetry and scientific research.

If here, the Austrian shows a special structure, then this is above all the fact that especially in the field of the art of poetry and music he has achieved performances which surpassed the creation of other German peoples by far, or at least were equal to them. As it can also be emphasized, that the living together for centuries with other nations makes the Austrian stand out, to equalize contradictions and to bridge inequalities. His joy in the sensuous, in the colorful, and his sense for the superficialities of life may have made him especially suitable for this. The narrow frame of the Trial imposes justified limitations here on an extensive description of the mutual cultural life. I limit myself to the quotation of names: The singers of the Nibelungenlied; the Minnesänger, Walther von der Vogelweide, Ulrich von Lichtenstein, and Oswald von Wolkenstein; the humanists Aeneas Sylvius and Konrad Celtis; the orientalist Hammer-Purgstall; the poet of the "Wehrmannslieder" Von Collin; the classical dramatic Franz Grillparzer; the homeland poets Stelzhammer and

Rosegger; and finally Rainer Maria Rilke, Franz Werfel, Anton Wildgans, and Hermann Bahr. When I turn to the magic world of music, then there is an abundance of the most illustrious names: Mozart, Haydn, Schubert, the waltz kings Lanner and Strauss, the symphonic composer Anton Bruckner, all were Austrians.

But is it not a symbol of spiritual unity that not only the North German poet Hebbel, but also Beethoven and Brahms made art-loving Vienna the permanent city of their work? There is no German music without Austria. But Austria not only made her contribution to the cultural life of the German people in the field of art, but also in the fields of science and technology.

But let us return to the Obersalzberg. If Hitler, the demonic psychopath, loved his homeland with the love of a rejected suitor then the love of Hermann Göring was of an entirely different kind. He also liked to look over into nearby Austria. He spent his youth there; it was not joyless and empty.

In the land of Salzburg with its old bishop city, its lakes and mountains, Hermann Göring learned to know Austrian characteristics, learned to love the people and country. What a joy it was for the courageous huntsman and later aviator when he got the first chamois on the crags in the cross-hairs of his telescopic sight. When he was severely injured by a burst of machine-gun fire on 9 November 1923 in the Odeonsplatz in Munich, faithful friends accompanied by his wife Karin, herself mortally ill, then took him from the pursuing bailiffs over lonely wood trails into the free Tyrol mountains of Austria. A large relief, on which already long before the Anschluss Austria was marked on the map of Germany without borderlines, shone in the large hall of Karinhall. But Hermann Göring was also Delegate of the Four Year Plan and knew that Austria was not only beautiful and rich with honors, but that she also owned the Erzberg where there was iron ore for the forging of guns; he knew the rich forests of Austria where there was wood for cellulose, for the construction of ships, and for rearmament; it was not unknown to him that there was in Austria the largest bauxite and magnesium sources of the world, and that Austria had the rich petroleum wells at Zisterndorf. Only power makes right! If Germany wants to have her say again in the world, then she must have a strong army and a strong navy. And for this reason he loved Austria!

Hermann Göring also never denied this, his conviction, and he expressed this repeatedly to the diplomats of the great powers. For instance, he stated openly to Lord Halifax, that it was an integrated part of German policy, regardless what government was in power, that the moment had to be created so that the unification of the two brother nations of purely German origin and blood could take place. He has also testified with human candor as witness before the Tribunal that when the question of the Anschluss came into its acute stage, he had grasped this ardently longed-for possibility for the total solution and that he takes upon himself the responsibility for everything which happened then, one hundred percent. He is therefore also to be believed when he stated further that he would do everything therewith so that the Anschluss would not lead to an endangering of the peace.

THE PRESIDENT: I think it is possible for the Tribunal to become acquainted with the history of Austria without having it read to them as a part of your argument. Up to now there has been nothing in your 20 pages but history of Austria.

DR. STEINBAUER: Mr. President, I beg your pardon; I consider it essential to portray the background in Austria which motivated my client. I have now finished, and I shall pass on to the facts.

The massed common will of the big two of the Third Reich to take over Austria at the opportune moment is the key to the solution of the Anschluss question. For that, there is no need for a

conspiracy; those who participated were pawns on the chessboard of the two men, supers on the great stage of the world.

But let us return to Austria.

Only if we know the history of this country in the time from 1918 to 1938, are we in a position to judge the role of the defendant in this question justly.

I have already pointed out in the presentation of evidence that in my opinion there were three reasons for the Anschluss, and I have also attempted to reinforce these by the documents submitted, to which I now refer: 1. The economic distress; 2. The disunity resulting from this; 3. The conduct of the great powers toward Austria, especially during the critical days of March 1938.

Dr. Karl Renner, the Federal President of the Austrian Republic, who enjoys the confidence of the four occupying powers, and on whom the entire Austrian people look with respect because he took the helm of the ship of state for the second time in a period of dire distress, described the history of the Anschluss very aptly in his memorandum in 1945:

"The political reason why the Anschluss idea took hold of almost all of Austria at the conclusion of the first World War lay in the repeated proclamations of the victorious powers that the war was waged for the right of self-determination of nations—

"That every nation had a claim to her own complete national state, and that the peace would fulfill this requirement.

"But it was not this political reason that was decisive for the masses. Austria is a mountainous country with much too little arable land, a country with an entirely one-sided economic structure. Its capital alone sheltered a third of the population; its industry was able to feed a large part of the people only by working for Austria's neighbors, receiving from them raw materials and bread. The sudden separation of the highly agrarian parts of the previously uniform tariff territory of the Danube monarchy and the measures of the succession states in 1918 introducing high protective tariffs deprived the country simultaneously of its food sources and its export markets. The fear of not being able to feed themselves and of not being able to find work at home, the sudden construction of the labor market, were the factors which in 1918 made the Anschluss appear to almost everybody as the only possible solution. One cannot talk about the national chauvinism of the Austrian working class, because a large percentage of this class derived from parents of non-German blood who had hardly lost their ties with the homeland. The overwhelming competition of the Reich German and Czechoslovakian industry loomed menacingly before the workers of all professions

in this small country, cut off from the sea, and poor in raw materials, and afraid that it would not be able to stand up against this competition. Not until we understand the economic situation can we understand the Anschluss movement, and why it was that Hitler's boastful announcement that he had done away with unemployment made such a deep impression on the Austrian working class, and why the will to resist the Anschluss was so weak within this working class at the beginning."

I have in front of me an economic statistical comparison from the year 1938. There are a few figures only, which speak volumes:

	Germany	Austria
Population	68,150,000	6,710,000
Area (in square km.)	470,714	83,868
Change in population (1936) per 1,000 inhabitants	plus 7.2	minus 0.1
Unemployed 1934	2,353,000	363,000
Unemployed 1937	573,000	319,000

Austria's Foreign Trade 1937; Export: To Germany, 179.8 millions; to Italy 172.6 millions; to Hungary 111.2 millions; to Czechoslovakia 87.5 millions.

By the decision of 5 September 1931 the Permanent International Court at The Hague declared the contemplated customs union between Germany and Austria incompatible with the Geneva Protocol of 4 October 1922 by 8 votes to 7. This was the last attempt of the governments to achieve a closer mutual constitutional relationship with the express agreement of the victorious powers. It failed. Was not the conviction bound to arise in the minds of fanatical Anschluss partisans that this supreme national aim could only be achieved through their own initiative?

A year later Austrian foreign trade showed a deficit of 613 million schillings. On 15 July 1932 Dr. Dollfuss concluded a loan agreement in Lausanne on the condition that the Anschluss question would be put off for another 10 years. The ratification took place during the session of the National Council on 30 August 1932 by 82 votes to 80. In the federal council, the Social Democrat Koerner, at present mayor of Vienna, had protested against this law, in view of a *rapprochement* with Germany.

Hitler came to power the year after. The Social Democrats saw their party dissolved in the Reich and the trade unions smashed; they saw the Reichstag fire and the beginning of the persecution of the Jews, and their leaders turned away from the Anschluss idea. The Catholic circles who wanted to fortify the Catholic element in the Reich by means of the Anschluss also turned away because the persecution of the Church in the Reich had begun; and only the National Socialists, whose membership had increased tenfold within a short time, were in favor of the Anschluss. As Dr. Dollfuss had eliminated Parliament and thereby the way to power by means of

the ballot, the National Socialists under the leadership of Landesinspekteur Theo Habicht strove with all means to gain power in the state. We come to the bloody events of the year 1934. Dr. Dollfuss is killed by the hands of assassins and his successor Dr. Schuschnigg attempts to restore order in the seriously shaken state system. The Socialists, however, remain sulkily aloof because of the events in February 1934. There are changes in the political situation abroad too. Whereas Italy in 1934 still stood at Austria's side, and Mussolini had deployed his divisions on the Brenner menacingly against the North, the Ethiopian adventure had forced Italy to Hitler's side. Austria is forced to follow the changed course and in order to improve the economic situation concluded the Agreement of 11 July 1936. In this agreement Germany recognizes the independence of Austria and ceases the economic war. The price for that, however, is a series of measures which give the National Socialists in Austria a new boost. In order to extend the small platform of his Government and bring about a real appeasement, Chancellor Dr. Schuschnigg declares himself willing to invite also the so-called Nationals to co-operate. Among these men is also the defendant, who then became Austrian State Councillor in May 1937. As already mentioned, the Anschluss idea constituted his political program. He never tried to hide this fact. He also comes from the ranks of the National Opposition, a factor which must not be overlooked. The Anschluss also brought him nearer to National Socialism, and it seems idle to engage in long investigations to find out at what time he officially became a member of the Party. Among the documents confiscated at his arrest was his membership card with the number above 7,000,000. The witnesses Gauleiter Rainer and Uiberreither confirm the statements concerning his Party membership. When, after taking office, the new State Councillor paid his first visit to the Führer's deputy, Hess, the latter was very polite but cool and expressed his regret that Seyss-Inquart was not an old fighter. The task of Dr. Seyss-Inquart was to supervise the execution of the July Agreement and to act as a mediator between the Austrian Government, the National circles, and the Reich. It was a thorny and thankless task. The Austrian patriotic circles (Vaterländische Kreise) could not forget the terror methods of the National Socialists during the Dollfuss period. The National Socialists, headed by Captain Leopold, were not satisfied with the methods of the national representative Seyss-Inquart in his dealings with the Government. Between these two men there were constant differences of opinion, which went so far that Seyss-Inquart wanted to give up the task entrusted to him—namely, bring about an agreement. To save time I refer in this connection to Documents Seyss-Inquart-44 (letter from State Secretary Keppler to General Bodenschatz), Seyss-Inquart-45 (Göring's telegram to Keppler) and Seyss-Inquart-46

(USA-704) of my document book. There were continuous violations of the July Agreement, and the Austrian Police found the plan for a revolution known as Tavs Plan, which was an attempt to overthrow the Government by violence. Minister Guido Zernatto has declared that the defendant kept himself aloof from all these endeavors.

Then came the conference of 12 February 1938 at Obersalzberg. What happened at this conference is well known. That the defendant discussed things on the evening before this conference not only with Zernatto, the representative and confidant of the Chancellor in the Government, but also with the National leaders is understandable, for one must never lose sight of the fact that the defendant had always openly declared his role as mediator. He also had to know the claims of the opposition, so that when the two statesmen met at Berchtesgaden the differences could be cleared up. The defendant cannot be charged with playing a double game within the framework of a conspiracy, because the National Socialist Party tried to exploit the knowledge of the situation to their profit, and by dispatching Mühlmann were quicker than the unsuspecting Chancellor Schuschnigg. Here, too, we must have recourse to Zernatto, who died in exile, and who declared that he was under the definite impression that Seyss-Inquart did not know at the time about the agreements concluded at the Obersalzberg. On the basis of this agreement Seyss-Inquart was appointed Minister of the Interior and Security. He went in that capacity to Berlin to pay an official visit to the Chief of State of the German Reich and to present to him his political program for the relations between the two states, as set down in the memoranda for file (Exhibit Number 61) submitted to the Tribunal. The account of this conference as given by the defendant in his testimony appears to be quite authentic. For various reasons Hitler had at that time obviously not yet decided to carry out the Anschluss. Let us here refer to what the Defendant Göring says, when he testified as a witness on 14 March:

> "I was not present at Berchtesgaden; moreover I was not in favor of this agreement, because I was always against any half measures which would prolong this state of suspension."

In a sense the Berchtesgaden agreement gave the Nazis in Austria a free hand to carry on their activities and propaganda. The 2,000 Party members released from prison on the basis of the amnesty and at least some of the members who had returned from the Reich became increasingly active in the federal states and sought to bring about a rapid growth of the Party. Hitler's Reichstag speech of 20 February was used by them as a signal for hostile demonstrations against the Government and thus to bring them quickly to power. Not only Schuschnigg but also the great mass of the working class realized how dangerous the situation had now become. The

threatening danger caused them to forget their differences, and the negotiations between Schuschnigg and the Socialist labor leaders and the Christian trade unions seemed to provide a guarantee for the defeat of the imminent attack of Nazism by uniting all democratic forces in a common defensive front. Prompt action was necessary, and Schuschnigg proclaimed his plebiscite. The whole country awoke from its lethargy. Workers and peasants were called upon to defend their country, and under the leadership of Zernatto swift electoral preparations were made in the factories and in the remote mountain valleys. It was clear that this attempt of Chancellor Schuschnigg to veer round and alter his course at the last moment could not fail to call forth the resistance of the National Socialists in Austria as well as in Germany. Hitler raved, and Mussolini's words before the election warning Schuschnigg that the bomb would explode in his own hand, unfortunately proved only too true.

And now let us come back to the defendant. He was not only a Government member, he was the confidant of the National Opposition and guarantor answerable to the Reich for Berchtesgaden. When the Prosecution charge him with having given Schuschnigg his word of honor about the election and having failed to keep it, that is not correct. Let us refer to the speech made by Gauleiter Rainer on 11 March 1942 to the Berlin Party members. On Page 12 of this Document, 4005-PS, it is disclosed that Zernatto's secretary was a secret member of the NSDAP and betrayed the plebiscite plans to her comembers as soon as she came to know of them. Rainer says he already knew the whole plan at 11:30 p. m. that same evening.

THE PRESIDENT: The Tribunal will recess now.

[A recess was taken.]

DR. STEINBAUER: The protest against the plebiscite made to the Chancellor by Seyss-Inquart in the name of the Nationals was entirely justified legally. Apart from the fact that there could be no guarantee for a proper vote at such short notice, the vote itself was not constitutionally legitimate. Article 65 of the Austrian Constitution of 1 May 1934 specifies exactly under what circumstances the nation can be called upon to vote. Dr. Schuschnigg, therefore, bases his proclamation of the election on Article 93 of the Constitution which article merely says generally: "The Federal Chancellor determines policy."

The Austrian Patriotic Front (Vaterländische Front), that is, the political organization, had the task of carrying out the election. The subsequent developments are well known, particularly the events

of 11 March 1938. The main charge in respect to the conspiracy is, I take it, that Seyss-Inquart caused the entry of the German troops by his telegram about alleged unrest. We find this historical lie, which has given the defendant the name of "Judas of Austria" in the story of the Anschluss. We find this historical lie for instance, in Raphael Lemkin's *Axis Rule in Occupied Europe* (Page 109). We find it again in the opening speech of the American Chief Prosecutor, Mr. Justice Jackson, although it is incontestably proved by the submission of Göring's telephone conversations (Document Number 2449-PS) in connection with Göring's testimony, that this telegram was never sent and, what is more, was dictated and addressed to a third party at a time when the German troops had already received the order to cross the frontier. Consequently, these telephone conversations of Göring represent a historical document of the greatest importance.

Rainer's speech in Carinthia and his testimony as a witness before the Tribunal also give the lie to the charge that Seyss-Inquart participated in the seizure of power. According to this document (Document Number 4005-PS) it was Globocznik who wrongfully used the telephone in the Federal Chancellery to give the alarm to the federal states. Appointed Federal Chancellor by virtue of Schuschnigg's withdrawal under duress, the defendant discusses the constitution of the Cabinet, invites the ministers to enter it, and takes the retiring head of the Government home in his own car.

When it is further learned from the testimony of the witness Stuckart and from Glaise-Horstenau under what circumstances the law of annexation came into being, then it can indeed be said that Zernatto was right when he wrote that Austria was conquered, in his opinion, even against the wishes of Seyss-Inquart and his Government. I refer to Exhibit Number 63. Whoever, therefore, dispassionately surveys the whole set of events of March 1938 relative to the Anschluss, and examines particularly the part played by the defendant, can only come to the conclusion that one cannot really speak of a carefully thought out "conspiracy," of the perpetration of a crime by co-ordinated stages. Where Austria is concerned, however, the Englishman Geyde is right when he says the curtain fell on the "Tragedy of Austria" when the troops marched in. It was to rise again soon on a new play: "The Martyrdom of Austria."

On 15 March 1938 Adolf Hitler came to Vienna. We have seen in this courtroom the film record of his reception. Deeply moved, the defendant addressed him as follows:

"What centuries of German history have striven for, what untold millions of the best Germans have bled and died for,

the final goal in fierce combat, the only solace in hours of bitterness has today been achieved. The Ostmark has come back to the homeland. The Reich is restored, the empire of racial Germans is established."

With these words Seyss-Inquart defined his political aim, which was and remained the guiding star of his actions.

With the Führer came Josef Goebbels, who turned on his gigantic propaganda machine at high pressure. There was rally after rally. Festivals were held. There was not a house in the land which was not beflagged. The leader of the Socialist workers said: "I vote yes" and the bishops exhorted the people to fulfill a national duty: "Render unto God the things that are God's and unto Caesar the things that are Caesar's." Both were to be disappointed. For with Goebbels came Himmler and his Gestapo and SS. Already during the night of 13 March there was a wholesale arrest operation in Vienna. It included the members of the former military associations, as well as prominent leaders of the Socialist paramilitary organizations, Jews who were active in political and public life, Communists and Monarchists, priests and Freemasons, and even the leaders of the Boy Scouts and of the Austrian youth organizations. In Vienna alone 76,000 arrests were made. Already on the 2d of April 1938 the first Dachau convoy left the West Station with 165 leading officials, including the present Federal Chancellor Figl, Education Minister Hurdes, and Minister of Justice Dr. Gerö. The second convoy followed on 21 May, the third at the end of May, and so it went on. Punctually, every 8 days, convoys left for Dachau, Buchenwald, and Sachsenhausen. On 10 May 1946, the People's Court in Vienna sentenced to death Anton Brunner, who had had 49,000 people, mostly Jews, sent to the extermination camps in Theresienstadt, Auschwitz, Minsk, and Riga.

And what of the defendant? He was given the cold shoulder and pushed to the wall. The victor of the Saar electoral contest, Josef Bürckel, was set up as Reich Commissioner for the reunion of Austria with the Reich and armed with dictatorial powers. The powers of the defendant scarcely exceeded those of an Oberpräsident in the Reich, that is, those of a second level administrative authority. Still less, because immediately above him was Bürckel who under the pretext of the annexation interfered with everything and laid claim to everything, particularly in matters concerning the churches and the Jews. This is evidenced by Documents 67, 70, and 91. The defendant opposed Bürckel's methods. He even raised objections to Hitler himself against Bürckel's action in Graz on 8 April 1938.

This we know from the testimony of Neubacher, Schirach, and Stricker, and from the documents submitted by the Defense. But

Bürckel, whom Churchill described as the Governor of Vienna in his book *Step by Step,* remained the stronger man and the importunate admonisher, Seyss-Inquart, was transferred to southern Poland as a provincial commissioner. This treatment alone at the hand of his alleged fellow conspirators shows only too clearly that Seyss-Inquart was actuated by his enthusiasm for the Anschluss and cannot have been a conspirator. He was not a leader, he was led or, what in my opinion is more accurate, he was misled, perhaps also a docile tool in the hands of the big two, Hitler and Göring. But it was solely for his political ideals, the Anschluss, without any intention of a war of aggression.

Of course, there was something of an economic boom in Austria after the Anschluss. It was partly a fictitious boom due to rearmament. But what took place was not the Anschluss that the Anschluss enthusiasts in Austria had visualized, especially when the war provided a motive and a pretext for ruthlessly controlling and repressing every dissenting or critical opinion.

Austria never ceased hoping for her liberation and fighting for it. There was much suffering and many died; 6,000 were executed in Austria. In the Landesgericht of Vienna alone 1,200 men died by the guillotine, 800 of them merely because of their anti-Nazi conviction. In the last days of the war Vienna's most beautiful buildings came down in ruins, and St. Stephan's Cathedral, one of the noblest monuments of German Gothic, went up in flames. Thus was fulfilled the promise that Hitler had made on 15 March 1938: "The pearl has the setting which its beauty deserves."

Not the idea of the Anschluss, that is to say, the wish to bring about the national unification of a people, was a crime; it was the introduction of a system that has probably prevented it from ever coming true; that was criminal. The defendant certainly did not wish that.

To conclude my statements on the Austrian question I shall now proceed briefly to examine the legal aspect of the charge against my client. To elucidate his legal responsibility, I will review his behavior in the following short survey:

First his political activity:

1) After the Agreement of 11 July 1936, the Federal Chancellor, Dr. Schuschnigg, took the Defendant Seyss-Inquart to work with him as a representative of the National Opposition, therefore, not as a political follower of his, as for instance the witness Guido Schmidt.

2) Seyss-Inquart always declared—for the first time to Dr. Dollfuss in July 1934—that the National Opposition consisted only of National Socialists who obey only Hitler's will, who, in any case, would never act against Hitler's will.

3) Seyss-Inquart declared he was a National Socialist; thus he always stood for the interests of the Austrian National Socialists. This is not only confirmed by the witness Skubl but borne out by the authorities previously quoted by me.

4) To avoid any military or international conflict, Seyss-Inquart pursued the following aim: To allow the Austrian National Socialists to participate independently of the Reich National Socialist Party, should Austria and Germany form a close union.

5) Seyss-Inquart declared that this aim could only be attained if Hitler agreed to it and directed the Austrian National Socialists expressly toward this policy. This he wanted to attain.

6) The culminating point of Seyss-Inquart's efforts was his interview with Hitler on 7 February 1938; although he was so to speak, minister by the grace of Hitler, he stood for his Austrian program.

Herein lies Seyss-Inquart's mistake. He thought Hitler and Berlin would pursue a joint policy, that is, as Bismarck said, use the "art of the possible." Berlin, however, did not wish to pursue a joint policy. In the face of this fact Seyss-Inquart's policy broke down on 11 March. Is this mistake punishable, especially as the Austrian State leaders desired to reach an agreement along the same lines, and Dr. Schuschnigg, knowing his program, allowed him to continue his activity? In view of the defendant's basic attitude until March 1938, details of his political tactical attitude are of secondary importance.

And now the activity of the defendant as Minister of the Interior and Security.

7) There is no trace of any National Socialist influence on the Austrian executive. The witness Skubl has confirmed this with exceptional clarity. Seyss-Inquart forbade the Police to take up any political attitude (Document 51); he forbade National Socialist demonstrations (Document 59); he avoided such occasions (Document 59); he demanded that the Austrian Nazis stand for legality (Document 52).

8) On 11 March 1938 Seyss-Inquart fulfilled his duties as mediator, in accordance with the Berchtesgaden agreement. Together with Glaise-Horstenau he gave Dr. Schuschnigg, in the forenoon of 11 March, a perfectly candid statement of the facts. He particularly pointed out the threatening National Socialist demonstrations and the possibility of a German invasion. In the afternoon he delivered Göring's demands to Schuschnigg and the latter's answers to Göring.

9) After Dr. Schuschnigg's offer to resign, Seyss-Inquart retired. He did nothing to comply with Göring's demand to obtain the

transfer of the Federal Chancellorship or to seize power. The ultimatums, with the threats of invasion by the Reich, were, as is known, transmitted by Embassy Counsellor Von Stein and General Von Muff, to whose pressure President Miklas finally yielded. This appears from President Miklas' statements (Document Number 3697-PS) and the statements of the witnesses Rainer and Schmidt.

10) Only after Dr. Schuschnigg's farewell speech did Seyss-Inquart publicly demand the maintenance of order. He did not designate himself as a provisional government but, in good faith, as Minister of the Interior and of Security, as was confirmed by the witness Schmidt. He took the order not to put up any resistance to the German troops from Dr. Schuschnigg's farewell speech.

11) Seyss-Inquart tried as long as possible to preserve Austria's independence, as instanced by his telephone conversations with Göring (Document 58), also by his request to Guido Schmidt to join his Ministry as Foreign Minister, as confirmed by the witness Schmidt, and according to the statements of witness Skubl; by refusing the demanded telegram (Document 58); by the request to Hitler not to march in, as confirmed by Göring; by the request to Hitler also to let Austrian troops march into the Reich.

12) On 13 March 1938 the Anschluss Law was issued in conformity with Article III of the Austrian Constitution of 1 May 1934. The psychological situation for Seyss-Inquart was the same as for all Austrians, who on 10 April had by secret ballot voted for the Anschluss by 4,381,070 votes to some 15,000.

Some of the accusations made against Seyss-Inquart are:

1) That he used his various positions and his personal influence to promote the seizure, incorporation, and control of Austria by the Nazi conspirators.

2) That, as an integral part of his evil intentions in the sense of the Indictment, he participated in the political planning and preparations of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances.

Concerning the first accusation, I refer to the above survey and limit myself to the following short statements: As a political aim, the annexation of Austria to the German Reich is nowhere indicted, and the defendant pursued no other aim. Here—as also on other points—the Prosecution go beyond the limits of the Charter.

Concerning the second accusation—that Codefendant Seyss-Inquart had participated in a conspiracy against peace must be judged by Article 6 (a), Part II (a) of the Charter. There it is stated, among other things, that collective planning, preparation, or execution of a war of aggression or a war in violation of international treaties, is punishable as a breach of the peace.

I leave it to the Tribunal to examine if this ruling can really be applied to the case of the entry into Austria in spite of the fact that there was no war. It is a significant point that, according to the meaning of the said ruling, the outbreak of a war is the condition for rendering an act punishable for breach of the peace within the meaning of the said provision.

In any case I cannot reconcile myself to an interpretation of this ruling which goes so far as to consider even an abandoned plan for war, or the possible planning for a war which turns out to be bloodless as punishable as the accomplished crime.

It must be pointed out most emphatically that no proof has been furnished that my client ever imagined that events would even lead to a war between Austria and any other power because of the Anschluss or pursuant to it. On the contrary, his decision to take an active part in politics after the drama of 25 July 1934 was dictated by the resolve not to let the Anschluss question become the cause of military or international complications. Furthermore, it must have been far from his mind to imagine that Hitler or his entourage had seriously considered the possibility of such a consequence. The outcome of the Austrian enterprise proved him to be right. The German troops were greeted on their march into Austria with flowers and cheers.

As for the great powers, France and England protested on 12 March 1938 against the Anschluss. But this was only a very mild and ineffectual protest. Military support for Schuschnigg was not forthcoming; above all, the League of Nations, the guarantor of Austria's independence, was not appealed to.

On 14 March 1938 the British Government declared in the House of Commons that they had discussed the new situation with their friends of the Geneva Entente and that the unanimous opinion had been that a debate in Geneva would lead to no satisfactory result.

When the League of Nations was informed of the Anschluss by the German Foreign Office it took note of it without protest, and the Austrian representative at the League of Nations, Pflügl, was given his papers. The Hague Court of Arbitration struck its Austrian member, Professor Verdross of Vienna, from the register of judges. The diplomatic agencies were withdrawn or transformed into consulates in the German Reich.

Only a very short time elapsed, in fact it was only a few months after the occupation and annexation of this small country that a treaty concerning another small state was concluded in Munich on 29 September 1938 with the alleged aggressor.

The French Prosecutor, M. de Menthon, in his opening speech mentioned that great politican and statesman Politis. I also would like to call him to mind. Shortly before his untimely death he

wrote in his book, *La Morale Internationale: "Qui menace les petites nations menace l'humanité toute entière."* The League of Nations powers did not feel called upon to pay any heed to this sentence.

But there is another principle of international order which they did not see fit to apply when confronted with the Austrian Anschluss. I mean that principle which, under the name of the Stimson Doctrine, has found entry into the science of international law and diplomatic language.

It is the principle according to which the nations of the world refuse to recognize territorial acquisitions obtained by force. This principle has at least penetrated into the legal consciousness of present times as deeply as the prohibition of wars of aggression, which is one of the main pillars upon which the Nuremberg Trial rests.

As evidence of this fact I will recall here the proposition of the Brazilian Delegate Braga to the second session of the League of Nations, in which he proposed a blocus juridique universal (universal juridic blockade) against aggressor states and at the same time submitted as one of the measures to be adopted, the denial of the right of annexation by aggressor nations. You will find this explanation printed in the document book submitted by Professor Jahrreiss to the Court as complement to his legal arguments, and which is reproduced there as Document Number 10 on Page 35.

I will further recall the so-called Saavedra-Lamas Pact signed by several South American states on 10 October 1933 in Rio de Janeiro and which the Little Entente and Italy also joined. Here the signatory states bound themselves not to recognize the validity of a forcible occupation or annexation of national territories. The Seventh Pan-American Conference accepted this principle on 26 December 1933 with the participation of the United States of America. It agrees as to contents with a proposition already submitted previously by the Peruvian Delegate Cornejo on 14 January 1930 to the Council of the League of Nations.

It is above all contained in the famous notes of the American Secretary of State Stimson to China and Japan of 27 January 1932, which contains the following sentence: "The American Government does not intend to recognize any situation, treaty or agreement brought about by means that are contrary to the statutes and obligations of August 27, 1928 in Paris."

And finally I remind the Tribunal of the declarations of the Council of the League of Nations on 16 February 1932, in which the Stimson Doctrine, raised to a principle, was expressed as follows:

> "No encroachment on the territorial integrity and no infringement of the political independence of a member of the League of Nations in violation of Article 10 of the Covenant of the League of Nations could be recognized as legally valid by the member nations."

Nevertheless all the nations of the world recognized the incorporation of Austria into the German Reich without feeling compelled to concern themselves with the Stimson Doctrine.

This likewise substantially answers the accusation of the crime against peace by violation of treaties. Germany is supposed to have violated three treaties. First the German-Austrian Agreement of 11 July 1936; second, Article 88 of the Treaty of St. Germain; lastly, Article 80 of the Treaty of Versailles. Here also, it must be pointed out that all the nations concerned have not only tolerated the violations of the treaties but, moreover, tacitly sanctioned them

by their attitude. This implies at least a renunciation of international law, and the powers concerned have thereby forfeited the right to take any action because of treaty violations, as this would be contrary to all sense of fairness.

With particular regard to Article 88 of the Treaty of St. Germain, the German Government, and therefore Seyss-Inquart as alleged coconspirator, cannot be charged with violation of this provision because Germany was not bound by this treaty, which she had not signed, and which for her represented a *res inter alia acta.*

On the other hand, the German-Austrian Treaty of 11 July 1936 was a *res inter alia acta* for powers other than Germany and Austria; here Austria alone could have raised the objection of a breach of treaty. In this connection attention is called to the fact that the reconstituted Austria is not among the signatories of the London Agreement of 8 August 1945. Therefore the four states of the International Military Tribunal are not entitled to vindicate the interests of Austria at this Trial.

With regard to Article 80 of the Treaty of Versailles, I resist the temptations to discuss the question of the legal validity of this provision; I will dwell on the legal significance of the contradiction of this article with the so-called Fourteen Points of President Wilson.

But in concluding my legal exposition of the Austrian affair, I cannot altogether refrain from expressing a general idea: One of the great principles of international order which in the course of the nineteenth and twentieth centuries has established itself after much suffering, much confusion, and many makeshifts and become more and more a reality is the right of self-determination of nations.

This basic principle of the right of self-determination of the nations has become so firmly rooted in the legal conceptions of international relations in our century that one is forced to the idea that it belongs to the general principles of international law, an idea that particularly appeals to the democratic way of thinking. But as a general principle of international law it would, together with the Charter, the prescriptive international law and, thirdly, the law of treaty, then become the standard criterion of judgment for the Nuremberg International Military Tribunal, which at all events must find a similar basis for other questions. And further it would acquire, like all other generally accepted principles of law, a constraining force and above all have precedence over international treaty law.

A number of states owe their existence to this lofty expression of the democratic way of thinking. Such a privilege was denied the Austrians after the first World War. Despite the fact that the people in Austria as well as in Germany unanimously strove for union, Austria was forced to eke out an existence as an artificial, unnatural

state structure, neither able to live nor die. How bitter are the words of the Encyclical *Ubi areano* of 23 December 1932:

> "We hoped for peace, but it did not bring salvation; we hoped for healing, but terror came; we hoped for the hour of recovery, but only confusion came; we hoped for light, but only darkness came."

In the year 1938, too, Austria and Germany strove for union, according to the wish of the overwhelming majority of their citizens, and this time their wish was fulfilled.

From the point of view of world history, the incorporation of Austria has no other significance than the triumph of a mighty and living principle of international order—the right of self-determination of nations. This dynamic force carried away artificial and unnatural treaty stipulations. Who can speak here of guilt?

I have nothing to say on the question of Czechoslovakia, and on the question of Poland very little, for during his short stay he was not in evidence at all of the Poles but was mainly concerned with the organization problems connected with the building up of the German administrative apparatus. In this matter it is sufficient for me to refer to the outcome of the evidence.

Nor will I say anything more about his honorary rank in the SS except that an honorary rank was never under Himmler's command and disciplinary power, nor did such rank carry with it this power in the SS.

As regards his position as a minister without portfolio, the importance of this function within the scope of the organizations will be discussed in the chapter "Reich Cabinet." Therefore, passing now from this interlude, I hasten on to the second scene of this case: the Netherlands.

Many know her only as the country of windmills, wooden shoes, and wide breeches; the red brick buildings, large herds of cattle in green meadows, and vast multicolored tulip fields. I know her as the country that gave to mankind a Rembrandt, and the many masters of the Dutch school, and Grotius, the great teacher of international law; the country that fought for her liberty in bloody battles against Philip II of Spain and produced the great naval hero De Ruyter, who won one of the most famous naval battles in history on 21 August 1673. But during this Trial we learned here that of all the occupied countries, the Netherlands offered the most united and stiffest political as well as increasingly effective physical resistance; we also learned that throughout these years these people never abandoned the hope that the day of liberation would surely come. The motto of the province of Zeeland: '*Luctor et emergo*—I struggle but emerge'—had become the rallying cry of the whole country.

Seyss-Inquart came to this country in May 1940 as chief of the civil administration. Whatever he may have thought and planned, it is his tragedy that he came as the representative of Adolf Hitler and of a system hated the world over. Hundreds of laws, orders, and decrees bore his signature, and no matter how correct they may have been legally, in the eyes of the people they still were measures of the enemy, and Seyss-Inquart still their oppressor. My client did not put himself forward for this office. On the contrary, he asked permission to go to the front as a soldier. Adolf Hitler refused this. Seyss-Inquart has also never contested his responsibility, and gave himself up voluntarily after the collapse. In case the legal opinion of the defense concerning the command of a superior is not shared by the Tribunal, the total organization of the Reich on the one hand, and the attitude of the Dutch people on the other, must, if only by virtue of Article 8 of the Charter, be taken into consideration in passing judgment on his administrative activity. The way in which Seyss-Inquart discharged his two conflicting tasks—namely to represent the interests of the Reich and at the same time to provide for the welfare of the population within the meaning of the Hague Land Warfare Regulations—is revealed by his attitude which I now describe: In the administration of Holland my client clearly allowed himself to be guided by the following legal conceptions:

The development of war technique, particularly in air warfare, the enormous extension of economic warfare, the expansion of the war into "total and indivisible war," the beginning of the idea of total blockade, have all made international law—as it was in force in the years 1899 and 1907 when the Hague Convention was established—meaningless from the viewpoint of the *clausula rebus sic statibus,* and absolutely incomplete and useless because of new requirements and prevailing conditions. Only a few vestiges from the old days were still valid in the second World War.

How drastic this change is, is most strikingly shown by the bombing of residential quarters, made possible by the colossal development of explosives and flying technique, and which had no justification whatever according to previous law. If indeed there is any justification at all, then this can only be found in the concept of total war. But, above all, this development brought the individual into war—due not least to the influence of the Anglo-American concept of war.

Accordingly, in the course of this development the enemy civilian population, as well as the resources of the occupied regions, have become a war potential of the occupying power up to the limits imposed by humanity.

A further limit is imposed by international law, which provides that the demands of these forces must be justified by military

necessity, and lastly that these demands must be reasonable *ex aequo et bono.*

Moreover, the totalitarian and indivisible nature of modern warfare precludes the special treatment of specific areas. It is no longer a question of requisitioning the human and economic forces of a definite area only for the requirements of that area, as it is still prescribed by the Hague Convention for Land Warfare. Henceforth the belligerent in power must have at his disposal the sum total of these forces, which on the other hand benefit from belonging to the whole.

Modern technical development, especially in the field of communications and traffic, also raise another problem of warfare, the so-called partisans, involving new and heavy tasks. In contrast to the period of the first World War, the partisan organization assumed enormous proportions in the second World War, and endangered the fighting troops, which at most can be compared with the guerrilla war of attrition against Napoleon I in Spain. The old international law made no adequate rules to offset this danger. It is evident that the guiding principle for fighting the partisans must be the security of the fighting troops at any price.

This means that the army as well as the occupation administration have both the right and the duty to take the severest repressive and preventive measures without going beyond the bounds of reason and humanity. My client performed the functions of his office in accordance with these guiding principles, always in the firm belief that he was carrying out his duty according to the directives of international law—that is, of the supreme Reich leadership. Any thought of acting illegally or even of committing punishable acts never entered his mind. That has nothing to do with the applicability in this case of the principle that ignorance of the law is no excuse, for here not national penal law is concerned, but international law and moreover it is not a question of a legal error, but of a subjective conception of duty, which may have erred here and there but was always sincere.

Having discussed the principles, let us now turn to the individual administrative acts of the defendant. Here it must be pointed out that, as everywhere in occupied territories but particularly in Germany proper, the National Socialist administration tended more and more to become overorganized, and responsibilities often overlapped. At the same time there was an extremely rigid centralization in Berlin. Consequently the following authorities were in control in the Netherlands: 1) The Reich Commissariat (civil administration and protection of Reich interests); 2) The Commander-in-Chief of the Armed Forces and the various commanders-in-chief, with their own courts; 3) The Police, about which

I shall speak later; 4) Four Year Plan—Göring; 5) Einsatzstab Rosenberg; 6) Department for the Allocation of Labor—Sauckel; 7) Armament Ministry—Speer; and 8) last but not least, the NSDAP with its offices and organizations.

Pursuant to the Führer order, thus *de jure,* the Reich Commissioner was bound to obey unquestioningly the instructions of these central agencies, and he was not allowed to have a say in measures taken by them. The record of history still to be written will perhaps reveal with what skill the defendant prevented some of these measures or at least succeeded in toning them down. As to the Dutch population, its attitude, as already mentioned, was completely hostile, and the resistance movement, organized, equipped, and directed through the Dutch Government in London, grew stronger every year. To reach a fair judgment, the defendant's actions should be considered against this background.

I now turn to the Indictment and shall follow in broad outline the presentation of the French prosecutor.

The first charge is the alleged violation of the sovereignty of the country by the introduction of the Reich Commissariat with its four general commissariats: Abolition of civic liberties; introduction of the Leadership Principle and dissolution of legislative bodies and political parties. These measures cannot constitute a breach of international law. Inasmuch as Germany, like the Netherlands one of the signatories of the Fourth Hague Convention of 1907, recognized during the war the laws governing land warfare, and notwithstanding the failure of the joint participation clause (Allbeteiligungsklausel) after entry into the war of the Soviet Union, the validity of the laws governing land warfare, in the sense of the limitations referred to at the beginning of the above statements, must be accepted for the Netherlands as well. Its rulings do not appear to have been violated. As a result of the complete occupation of the country and the flight of the Queen and of the ministers, the highest governing power in civil affairs passed from the Crown and the Parliament to the occupying power, and thus to the Reich Commissioner. Owing to the unconditional capitulation of 10 May 1940, General Winkelmann, who had been left behind in the country and was vested with special powers, renounced his authority in every respect.

Furthermore, it is the recognized right of the occupying power to organize the administration as its requirements demand. In so doing it must do nothing which anticipates the final decision as to the fate of the country. This was definitely recognized also by the Supreme Court of the Netherlands by the decision of 12 January 1942, submitted by me. The division of authority between the Reich Commissioner and the Commander-in-Chief of the Armed

Forces, as provided for by the Führer decree, also represents an internal distribution of jurisdiction by the occupying power. This is definitely established in the British *Manual of Military Law* of 1936. The fact that the State Parliament was suspended, the activity of the State Council restricted to the preparation of opinions in disputes on administrative matters and that, finally, the parliamentary parties were dissolved, is likewise no violation of international law, because during the period of occupation it is the occupant who decides to what extent there is need for legislative measures and for amendment of the legislation of the country. As a rule, at every election about 50 parties entered the contest for the 150 seats in the Dutch Parliament. The fact that these parties, formerly at variance with one another, not only joined forces in their antagonism to the occupying power, but very often were active in the various resistance movements, gave the occupant every justification for suspending and subsequently dissolving them—their final dissolution was not decreed until 5 July 1941—the more so as the country lay on the direct path of the coming developments of the war, and an invasion was to be expected. This made it necessary for the administrative apparatus to concentrate all its force to do away with parliamentary obstruction and deprive these institutions of their latent power to carry on hostile propaganda.

In answer to the accusation that the NSB was sponsored for this purpose it must be said that the Reich Commissioner consistently refused to form a government from these parties. That parties which were already in existence in the country, or were newly formed, and who identified themselves ideologically with the occupying power were encouraged by the latter is likewise not disallowed by international law. As no official administrative powers were vested in the NSB, and since political organizations had no influence on the administration, the fact that in 1943 this party declared itself to be the representative of the political will of the Dutch nation is immaterial. It always has been and continues even today to be the practice of the occupying power to encourage and assist political parties friendly to them.

The charge of Germanization is also unjustified. By their origin the Dutch people were always considered to be Teutonic and it is, therefore, not possible to make Teutons out of them. When we look into Dutch history we find that for centuries the Netherlands belonged to the Federation of the German Reich. If you roam through the country you can still see in Groningen's coat of arms the German Reich eagle, in the same way that Amsterdam's coat of arms has borne the emblem of the German imperial crown since 1489. The first and the last Salic Emperors, Konrad II and Heinrich V, died in Utrecht. That the occupying power should desire

to orientate toward central Europe a country cut off from the sea and her colonies by the blockade was understandable, but it never was intended, certainly not by the Reich Commissioner, to eliminate the national traits and the independence of the Dutch. The defendant was perfectly right when in his speech of 9 November 1943, in Utrecht (Document Book 102), he declared among other things:

> "We ourselves would cease to be Europeans should we fail in our mission to tend and to promote the growth of these flowering cultures of the European peoples, each with its own individuality, and bound together with blood ties."

Equally unjustified is the charge of the French Prosecution that pressure was used to bring the Netherlands into the war. There was nothing against enlisting volunteers of Dutch nationality in the German Armed Forces; Article 45 of the Law of Land Warfare only forbids compulsory recruiting for war against one's own fatherland. This did not make those who took up arms voluntarily immune from the regulations of the Dutch penal code, as mentioned by the Prosecution, which during the war were made more severe by royal edict. The same holds true of the citizenship regulations for these volunteers and regulations concerning marriage to German nationals. Inasmuch as these orders of the Reich Commissioner had no legal value outside the compass of the German Reich, the legal deduction that they do not constitute an abuse of sovereignty in the sense advanced by the Prosecution can be put forward with a clear conscience. That a press which notoriously placed itself in the opposite camp of the occupying powers was silenced goes without saying.

The French Prosecution see a further suppression of sovereignty in the stifling of intellectual life by the closing of the universities and the demand for a declaration of allegiance. Special mention is made of the closing of the University of Leyden. But the University of Leyden was closed because of rioting by the students, and being a security measure of the occupying power, it cannot be an infringement of international law. In the same way, the demand for a declaration of allegiance is not at variance either with the Rules of Land Warfare. According to Article 45 the population of an occupied country may not be forced to take the oath of allegiance; according to the wording of the declaration all that was demanded was to abstain from any action directed against the German Reich or its army. Inasmuch as the population of an occupied country is bound to obey the occupying power exercising the authority of the state, this declaration, which does not make any actual demands, cannot be considered a violation of international law.

The organization of the administrative authorities was taken over almost as a whole, and maintained in the face of an entirely un-co-operative, even hostile attitude; especially did one refrain from interference in the courts. The only reproach in this direction is the dismissal of the President of the Court of Justice at Leeuwarden. The defendant has definitely declared that he assumes responsibility for this case, and he has a perfect right to do so. The occupying power may interfere in the field of the judiciary only when the purpose of the occupation is in jeopardy. If a judge refuses to administer justice, even though the cause for his complaint was removed by the Reich Commissioner, as was the case in this instance, then the occupying power has the right to remove from office the judge concerned.

The French Prosecution then continue, asserting that the defendant initiated a series of acts of terror. In the course of the presentation of evidence on this point we have heard what the circumstances of this collective punishment were. Moreover, Kammergerichtsrat Rudolf Fritsch and President Joppich showed by their testimony that the defendant was extremely conscientious in the application of the right to grant pardon, and that he limited capital punishment as much as possible. And as regards the special police courts, both the defendant and the witness Wimmer have proved that this was a procedure applied in exceptional cases only, headed by an official of the judiciary, and that the defendant had the right to the services of a freely chosen defense counsel who could also be of Dutch nationality; a procedure which lasted a short time only—about 14 days. Even today we find the individual occupying powers using this procedure in a much severer form in exceptional cases. In July 1944, as a result of a Führer order, the regular courts were abolished and saboteurs and members of the resistance handed over for sentencing, in spite of the protests of the defendant.

One of the main points of the Prosecution is the question of hostages, and I must therefore discuss this in detail. Dr. Nelte has already generally discussed its legal aspect and I refer to his statements.

In RF-879 the Prosecution have picked out two particular cases: The so-called hostage shootings at Rotterdam and the shootings after the attempt against the Higher SS and Police Leader Rauter. Already in the course of his first interrogation by the Prosecutor, the defendant, in connection with the first case, spoke of the Armed Forces' demand for 25 to 50 hostages. The witness Wimmer confirmed that these hostages had been demanded by the Armed Forces, that through the defendant's influence this number was

finally reduced to 5, and that the Higher SS and Police Leader was entrusted with the shootings.

The relations betweeen the Armed Forces and the Reich Commissioner, as well as the relations between the Armed Forces and the Police, were regulated by the decree dated 18 May 1940 (*Reich Law Gazette,* Part 1, Page 778, Document Number 1376-PS, Paragraphs 2-3).

In order to convict the defendant, the Prosecution submitted the accusation but not the testimony of General Christiansen. In the course of the interrogation the witness did not take the oath.

The record proves that: a) The order was issued by the Armed Forces because of serious cases of sabotage and was analogous with the so-called Law Governing Hostages promulgated in Belgium and France; b) the hostages were then arrested by the German Police on the order of the commander of the Armed Forces in Holland—"An order is an order"; c) the High Command of the Armed Forces or Command, West insists on the execution of the orders in spite of all representations; d) execution by the Police; e) Proclamation I made in the judicial department of the headquarters of the Armed Forces in Holland. Proclamation II drafted by the Higher SS and Police Leader.

Would the Tribunal consider the argument for the justification of the defendant to be sound if he used the arguments of General Christiansen for his justification?

As to the second so-called hostage case, it concerns the consequences of an attempt directed in March 1945 against the Higher SS and Police Leader, SS Obergruppenführer Rauter, the highest police officer in the Netherlands, who was directly subordinated to Himmler. If we recall the consequences when in 1942 the tyrant Heydrich was murdered by the Czech patriots, we can well imagine how Himmler in 1945, at the height of his power, clamored for vengeance for the plot against one of his nearest and most important officials. It is likewise understandable that the defendant too, as head of the administration, ordered deterrent measures to be taken, under the heading of "general prevention," after an attack had been made on one of his commissioners general. But he did not demand any hostages; he merely asked for the execution of sentences passed at legally conducted criminal cases. Exhibit Number RF-879 proves the truth of these assertions since the witnesses Schöngarth, Lages, Kolitz, and Gerbig unanimously confirm that only men already sentenced to death were shot, and not 200 but 117, some of them possibly before the date originally fixed for the execution. This also is confirmed by the Criminal Commissioner Munt in D II of the report of the Dutch Government, and likewise by Dr. Friedrich Wimmer, who was heard as a witness before the Court. In this case

it was not at all a question of hostages in the real sense, but the justifiable execution of saboteurs, plunderers, *et cetera,* from the point of view of the occupation, and which was called the shooting of hostages in order to frighten the population. The fact that the defendant succeeded in getting the number of 500 real hostages as originally demanded by Himmler reduced to 117 orders of execution can certainly not be a reason for making him responsible for Himmler's cruelties.

The Prosecution furthermore asserts that the defendant in his capacity of Reich Commissioner had agreed to, directed, and supported the deportation of an enormous number of Dutchmen to Germany. The principle which the question of the use of foreign workers involved has already been thoroughly discussed by other defense counsel. May I be allowed to add a few remarks on this point of the Indictment. According to information which I received from the Office of Statistics, the prewar unemployment figures of 300,000 to 500,000 men out of a population of 9 million was a chronic situation in the economic life of the Netherlands, which was more or less rightly considered to be one of the richest countries of Europe. When the country was occupied and the Reich Commissioner took over the governmental power, he considered it his duty to deal with unemployment in the interests of order and peace.

It was evident that this could not be achieved according to liberal principles, because even in countries adhering to the liberal economic order, the whole economy was directed to meeting the requirements of war conditions. Until 1943 the employment of labor was based on the voluntary principle. The defendant himself stated that a certain amount of economic pressure was used. He had found Minister Speer in particular very much in favor of his plan to transfer German undertakings from the Reich to Holland, thus enabling the workers to be used in their home country.

In 1943, three age groups of young unmarried men were called up by the labor offices, but not by compulsion. When in 1944 the Reich demanded 250,000 workers, the Reich Commissioner refused, and this has been confirmed by Lammers. The witnesses Hirschfeld, Schwebel, and Wimmer have confirmed that the "man-hunting action" of the autumn of 1944, which rounded up all men of military age among the population, was a drive by the Armed Forces, for which the defendant cannot be made responsible. On the contrary, and this fact must be recorded here, the Reich Commissioner softened these measures by issuing 1,000,000 certificates of deferment and by urging proper transport, as well as by mobilizing the workers. And in this connection it should not be forgotten that the steady growth of the resistance movement rightly caused the Armed

Forces to fear lest the massing of people in the southwest provinces might represent a grave danger to the occupying power.

Seen from the legal aspect, it must be pointed out that the defendant was bound by the orders of the central offices within the framework of the Four Year Plan—that but for these orders and demands he would never have sent workers to the Reich, also that where even the execution of these orders represented a violation of the laws of humanity, he raised protest. In his actions the defendant upheld the laws of humanity.

As to the Prosecution's next point, the so-called economic looting of the country, I likewise refer to the general principles I gave at the beginning. Raw materials were requisitioned from the very start of the occupation in accordance with the Four Year Plan with the help of the Dutch authorities, who thus were able to prevent unnecessary hardship. The defendant would naturally have preferred to keep the stocks within the territory of his own administration. When requisitioning had to be carried out, the defendant insisted on fair compensation being given and he also prevented the transfer of Dutch concerns, as for instance the margarine factory in Dortrecht or the Leyden Cold Storage Works. On the insistence of the Reich Commissioner, Göring promised that the Dutch people should not be in a worse position than German citizens and, therefore, as far as the defendant is concerned, it would appear that Article 53 of the Hague Rules of Land Warfare, if not too narrowly interpreted, had been adhered to.

The report of the field economy officer under the Armed Forces commander in the Netherlands, dated 9 October 1944 (Exhibit RF-132), and of Lieutenant Haupt (Document Number 3003-PS, Exhibit USA-196) prove that the requisitions were in the first instance carried out by the Armed Forces. The latter points out that the whole position is made more difficult by the fact that Reich Commissioner Seyss-Inquart is still in the country, although to all intents and purposes he had resigned. This certainly shows that as far as it lay within his power, the defendant always tried to oppose or reduce hardship in this sphere of his activity. In a total war the removal by the Armed Forces of stocks of war material and rolling stock after the invasion, and when the enemy was approaching, is likewise in keeping with international law.

The state of emergency created by the war called for the redirection of Dutch economy in Europe. Before the war, according to official statistics, 39 percent of the employed population were engaged in trade and industry, 23 percent in commerce and transport, and 20 percent in agriculture. Cut off from the rest of the world, navigation was at a complete standstill. To give an example—60 percent of the trade passing through the port of Rotterdam consisted

of German goods. The highly developed agricultural industry was based on improved and intensive cultivation, dependent on artificial fertilizers from South America and concentrated fodder from Canada. We have learned from the testimony of Dr. Hirschfeld how relatively well Dutch agriculture and particularly the world famed cattle-breeding industry survived the war. This was only made possible by the understanding and collaboration of the Reich Commissioner with the Dutch administration offices and the support the defendant gave them.

The extension of trade over the continent of Europe, practically the whole of which during the war was controlled by Germany and her allies, no doubt offered good markets for Dutch trade and industry. It was, therefore, natural that also as regards finance, the economy had to be brought in line with conditions in the German Reich, or rather in the European economic area. It was necessary to regulate the financial economy if only for reasons of price policy. It would exceed the limits of this Trial to state more details here.

May I only point out to the Prosecution that the defendant had no part in fixing the amount of the occupation costs and was not even able to examine them. Only the civilian budget of the Reich Commissariat was settled by the Reich Commissioner and had to be approved by the Reich and audited by the Reich Treasury. In agreement with the Dutch agencies, civilian requirements were set at 3 million guilders per month, which was not exceeded. On the contrary, at the end of 1943, a saving of 60 million guilders had been affected, and this remained in the Netherlands.

The lifting of the customs barriers in interstate traffic was justified by the joint price policy and could only benefit the Netherlands. Likewise the ratio of the mark to the guilder was also fixed by mutual agreement. A difference arose for the first time when the blocking of foreign exchange was lifted. Here the views of the former Dutch Secretary General, Trip, and those of Commissioner General Fischböck differed. The defendant, who after all was not a financial expert, submitted this important question to the central Reich authorities for their decision, and the Defendant Göring has expressly stated during the hearing of the evidence that he decided in favor of Dr. Fischböck. The defendant therefore cannot be charged with criminal responsibility, not even that of a *culpa in eligendo,* if in the place of Secretary General Trip, who had resigned, he now appointed Rost van Tonningen, who was a former commissioner of the League of Nations and therefore a first-class financial expert.

The Defendant Funk has also testified here that he always considered the clearing debts as real debts. In the Netherlands Government report it is pointed out that the financial demands of the Reich

amounted to approximately the same in all the occupied western territories and that only the methods differed. If Germany had won the war, the method employed in the Netherlands would have produced the result that the Netherlands would have had a real claim amounting to 4,500,000,000 guilders against the Reich. The whole question therefore is not a matter for a criminal trial, but rather is one that should be dealt with in the peace negotiations. Furthermore, an exact account was kept of everything. It even went so far that every time a member of the Armed Forces boarded a train with a free ticket, the conductor of the Netherlands Railroad Company always made a careful note of it.

As far as the alleged looting of museums and libraries is concerned, as well as the looting of the royal property, to save time let us refer to the evidence which proved beyond doubt that the defendant was particularly mindful of the need to safeguard the world famous public art treasures and that he reduced any arbitrary demands of the Reich offices, if there were such, to a minimum.

Insofar as any objects not essential for the conduct of the war, such as, for instance, art treasures, libraries, *et cetera,* were taken away, the defendant had no part in this. The few pictures which he bought for Vienna he acquired in the open market. As for the royal property, the instructions he issued were such that the confiscation of this property was no more than a demonstration. That this is true is shown in the Dutch Government report. The Rosenthaliana library which has been mentioned so often, did not reach the Reich, as the defendant had it stopped at Groningen after it had been removed against his will. The Arnhem case would likewise appear to have been cleared up by the witnesses Dr. Hirschfeld and Wimmer, and the report of the field economic detachment (Document 81).

The Jewish question has also a certain connection with the economic problems. Before I deal with this main point I must make the position of the Police in the Netherlands clear. The Prosecution seeks to establish that the Police, and by that is meant also the German Police, particularly the Security Police, was under the defendant. This attempt falls short when it is remembered that all the signatories with the exception of the Soviets hold that the Police is actually a part of the civilian, particularly the domestic, administration. The situation in Germany was this: *De facto,* and not *de jure,* Himmler was independent, more powerful even than any other minister, although he was nominally State Secretary of the Ministry of the Interior. The strictly disciplined and centrally directed SS was subordinate to him in his capacity as Reichsführer. The Defendant Keitel testified on 5 April 1946 that from the outbreak of war the SS became more and more an independent power factor in the

Reich. He and those who worked with him had no full knowledge of the extent of Himmler's powers, and Himmler and Heydrich had usurped the jurisdiction over life and death in the occupied countries by the frequently mentioned Führer order.

What was the situation in the Netherlands?

1) The Führer decree of 18 May 1940 already shows that the German Police was not part of the Reich Commissioner's organization, nor was it subordinated to him. For it says in the decree: "The Police is at the Reich Commissioner's disposal,"—which would not have been necessary if it had been a part of the Reich Commissioner's office.

Thus even though the Reich Commissioner is the supreme governing power in the civil sphere, the Police is not a part of it.

2) In Decree Number 4 the Reich Commissioner named the administrative agencies so that the Dutch could clearly see how it concerned them, without being affected by the splitting up of the Reich authorities. With regard to the Police, that is, the German and Dutch Police, a second Commissioner General was appointed for security affairs (Higher SS and Police Leader). According to Article 5 of this decree the Higher SS and Police Leader has under his command:

a) The German Police and Waffen-SS (For the Dutch this order of things was declarative, for the Higher SS and Police Leader was appointed by the Führer on Himmler's recommendation, without the Reich Commissioner being consulted. Rauter presented himself to the Reich Commissioner as having been already appointed, and the Reich Commissioner would never have been able to appoint the commander of the Waffen-SS, which opinion is also shared by the Prosecution).

b) The Dutch Police (This order of things was constitutive, because the Reich Commissioner was responsible for the Dutch Police).

The Dutch witness, Dr. Hirschfeld, who was Secretary General throughout the occupation, definitely confirmed that Rauter was directly subordinate to Himmler, and that the apparent unity of the Police and administration, according to the decree, did not exist in reality.

On Page 21 of his book *Axis Rule in Occupied Europe* Raphael Lemkin defines the task of the Police as being the liquidation of politically undesirable persons and Jews, just as the main responsibility for the seizure and deportation of the workers in the occupied countries was borne by the Police.

THE PRESIDENT: Would that be a convenient time to break off?

[The Tribunal adjourned until 22 July 1946 at 1000 hours.]

ONE HUNDRED AND EIGHTY-THIRD DAY

Monday, 22 July 1946

Morning Session

THE PRESIDENT: The Tribunal understands that the British Prosecution will answer on behalf of all the prosecutors with reference to the documents to be translated, relating to the organizations of the SS and the political leaders; so shall we deal with those first?

LIEUTENANT COLONEL J. M. G. GRIFFITH-JONES (Junior Counsel for the United Kingdom): My Lord, I am myself dealing with the documents for the political leaders, and my friend, Mr. Elwyn Jones, is dealing with those for the SS.

Perhaps it would be convenient for the Tribunal to take the documents for the political leaders first.

THE PRESIDENT: Yes.

LT. COL. GRIFFITH-JONES: My Lord, I have spoken to Dr. Servatius, who represents the political leaders corps, and we have agreed on the documents which he should submit in his final book. I have had lists printed which show the documents on which we have agreed.

Originally he has submitted six document books, with a total of over 250 documents, some of considerable length. We have agreed that from those a total of 90 odd documents should be included in the final book, and of those 90 we have only—certain passages—to be translated. I have a copy of the document books which have been marked, the passages on which we agree, and the remainder, of course, would be excluded.

THE PRESIDENT: What length will the document book be? Can you tell at all?

LT. COL. GRIFFITH-JONES: Except that there will be about—nearly 100 exhibits, but they will be quite short, the majority of them. The longest, I think, is two pages, and the remaining documents are just short extracts, perhaps a paragraph or two paragraphs.

THE PRESIDENT: Yes.

LT. COL. GRIFFITH-JONES: Perhaps I might say this: Dr. Servatius had included in these books a number of affidavits which we have excluded, because we understood the Tribunal desired affidavits to be heard before the Commissioners. He had also included a number of quotations from *Mein Kampf*. These, if the Tribunal agree, we have excluded, because we thought that the Tribunal had their own copy of *Mein Kampf* and it would save work in the translating and printing departments.

For the remainder, much of the matter that was suggested was cumulative, and Dr. Servatius, I think, quite agrees that what we have put down now in Column A will meet his purpose.

There are—I understand, talking to him just before the Tribunal sat this morning—there are certain amendments to this list which he desires to make. He desires to include in Column A Documents 50, 68, 69, and 162, which at the moment are excluded.

My Lord, perhaps it would be convenient if Dr. Servatius and myself discussed the matter further, and perhaps you would entrust us to come to some arrangement about the inclusion or exclusion of those documents.

THE PRESIDENT: Yes, certainly.

LT. COL. GRIFFITH-JONES: I do not know whether Dr. Servatius wishes to say anything.

DR. ROBERT SERVATIUS (Counsel for Leadership Corps of the Nazi Party): Mr. President, I agree with this arrangement, and these minor questions which still require clearing up I will settle with the Prosecution. The books will probably then be reduced to two. There will be two document books left.

THE PRESIDENT: Thank you.

Yes, Mr. Elwyn Jones?

MAJOR F. ELWYN JONES (Junior Counsel for the United Kingdom): If Your Lordship pleases, with regard to the SS documents, Dr. Pelckmann and the representatives of the Prosecution have reached an agreement as to 99 of the documents. It has been agreed that 22 should be excluded and, with regard to the others, some are to be included *in toto*, and as to the others only extracts are to be included.

As to Documents 31 and 32, Dr. Pelckmann indicated that he was reconsidering his application with regard to these two documents, and it may, therefore, be possible that Dr. Pelckmann will have some observations to make to the Tribunal with regard to them.

With regard to six of the documents, however, the Prosecution and the Defense have not been able to reach an agreement. Dr. Pelckmann insists that those documents are necessary for his case and it might, therefore, be convenient for me to indicate to the Tribunal the Prosecution's objections with regard to those six documents.

The first is Document Number 69, which is an extract from a speech made before the first meeting of the Reichstag after the Nazi seizure of power by the Social Democrat leader, Wels. This extract states that Wels' party favored the plea for national equality and denied Germany's war guilt. I submit, on behalf of the Prosecution, that that extract is wholly cumulative. There is an abundance of evidence of that kind before the Tribunal already. It is in any event, I submit, not relevant to the SS case.

THE PRESIDENT: Germany's war guilt, at what time?

MAJOR JONES: With regard to the war before the last one.

THE PRESIDENT: Yes.

MAJOR JONES: I finally suggest that if that document is admitted by the Tribunal then it would be proper, in the interests of historical truth, for the extract to be continued to include the severe criticism of the Nazi Party made by Mr. Wels.

The next document is Document 85, which is an extract from the *Völkischer Beobachter* giving a quotation from William Randolph Hearst's alleged statement to the Defendant Rosenberg on the 3d of September 1934 to the effect that when that distinguished gentleman was in Germany 3 years ago there was the greatest disorder there; today, the 3d of September 1934, under Hitler's leadership Germany is a country of order. The Tribunal will remember that this date was about 9 weeks after what even Himmler has described as the appalling murders of the 30th of June 1934. I respectfully submit that that extract is, again, cumulative, irrelevant, and, finally, is of no probative value whatsoever.

The next document is Document 86, which is an extract from the *Völkischer Beobachter* purporting to be an American athlete's impression of a journey through Europe in 1934. He states that he is satisfied with what he saw in Germany. Again, I submit that that is cumulative, irrelevant to the SS Case, and of no probative value.

The next document which is in dispute is Document Number 96, which is an extract from a book by an author alleged to be an American which was, significantly, published in Germany in 1935. It is a long extract dealing with concentration camps. It describes a visit by the author to Oranienburg Concentration Camp, in which he refers to the modern sanitary installations there, bedrooms which are apparently as good as those of the American

Army; the prisoners apparently ate exactly the same dinners as the camp commandants and the SS guards. The author says that they had three rich meals every day, naturally without luxury, and he goes on in that vein. I do submit that that extract is of no probative value whatsoever.

There are, finally, two further documents, 101 and 102.

Number 101 is an extract from an American magazine purporting to describe the result of certain experiments carried out by American scientists with a vaccine said to be immunizing.

Number 102 is an extract from a book, *An American Doctor's Odyssey,* referring to further experiments with agents said to be immunizing and to other experiments in connection with the beriberi disease.

The Prosecution does not, of course, in any way admit the truth of the facts set out in these extracts, but I submit that even if they were true they have only a *tu quoque* relevancy and I submit should not be included in the documents for the SS organization.

Apart from those documents, the Defending Counsel and the Prosecution have reached an agreement, and there is no more to say, My Lord.

THE PRESIDENT: The Tribunal would like to hear Dr. Pelckmann.

HERR HORST PELCKMANN (Counsel for the SS): Mr. President, I have to deal with various documents which have just been objected to by the Prosecution. First of all, I refer to Document Number SS-31 and Document Number SS-32.

Documents SS-31 and SS-32 have to do with the question whether the SA and the SS demanded that students should enter the SA and the SS. This is a question which is highly important for the SA. The SA have not yet completed their collection of documents. I think these documents are going to be submitted by the SA, and I shall therefore put them aside for the moment. Up for debate are the remaining six documents only. Let us first come to Document Number SS-69.

I should like first to say something in principle with reference to these documents. The documents do not, by any means, deal with the question as to whether what they contain is or was objectively true. They are merely submitted in order to point out how the readers assumed that real facts were being presented, and these facts were decisive for the opinions formed by the German people as well as, of course, by the members of the SS who are part of the German nation; just as they were for the opinions formed by a Party member or a non-Party member.

They are documents dealing with the attitude adopted abroad or in our country. I believe that matters will have to be looked at from a different point of view in this connection than perhaps was done in the case of the individual defendants. The attitude adopted abroad cannot be relevant for the individual defendants, for the Prosecution assert that for the majority of the defendants it would appear to be evident that it was just these major defendants who deceived foreign countries. With reference to the masses of the population, however—and that affects the SS members also—what was thought and done abroad must be decisive in forming an opinion as to whether the Nazi regime is criminal or not. That is the general point of view which I think applies to all these documents.

The first Document Number SS-69 is a speech, as the prosecutor has said, by the Social Democrat member of Reichstag Wels. It is merely to show that this Social Democrat deputy, even after the seizure of power by Hitler, agreed with Hitler that the Treaty of Versailles must be fought against. By that I do not wish to say anything about the justification or nonjustification of the Treaty of Versailles. I am merely trying to show what the masses of the people were thinking and what the followers of Hitler, who had only just come into power, were thinking, when even a Social Democrat agreed with the Party Program on that point. For that reason I consider the documents as relevant, and particularly for the SS, because they, just as all the other Germans, were influenced by such statements in forming their own opinion.

THE PRESIDENT: Do you mean that the document says that the Treaty of Versailles should be fought against by war, or should be attempted to be changed by negotiations?

HERR PELCKMANN: No, it does not at all mean that the Versailles Treaty should be fought against by war.

Now, as to Documents Number SS-85 and SS-86.

Hearst, the American publisher of world-wide reputation, who as far as I know had considerable influence at that time in America, says, as the Prosecution correctly point out, in September 1934, a few months after the bloody events of 30 June 1934, that when he was in Germany 3 years ago he found the greatest chaos and that today under Hitler's leadership Germany is a land of perfect order.

Please note—and I must emphasize once more—that I am not referring to the objective facts; I am stating what was said about conditions in Germany by circles abroad—which in my opinion, were of weight in the publishing field—what was spread abroad and what was brought to the notice of the German people by means of the National Socialist propaganda machine, so that the German people, and with them also the bulk of the members of the SS, could not believe anything else than these published statements.

and saw in them a confirmation of their real belief at the time that here something really was being done for order and thereby also for world peace.

The second statement, in Document Number SS-86, is on somewhat similar lines. It is a report of 27 September headed "America is participating in the Olympic Games." The man in charge of American athletics had gone into the question very carefully as to whether the American nation ought to participate in the Olympic Games, and he then made a report in America in which he made statements about his experiences in various parts of Germany. He expressed himself very satisfied and was very much in favor of American participation in the Olympic Games.

The result was, as expected, that the committee decided that America would participate in the games. This again constitutes a corroboration, a consolidation and strengthening of German public opinion, and therefore also of the opinion of the bulk of the SS members, that in certain respects foreign countries were adopting an absolutely positive attitude toward the new Germany. It should not be forgotten that the different years, the different dates are most important. When the fundamental questions affecting the Indictment against the organizations were discussed before the Tribunal, from 28 February to 2 March, it was also pointed out that the time at which membership of an organization was acquired must very likely be regarded as a deciding factor. One must take into account in this connection that, when after 1933 the membership of the SS grew considerably, it was surely a decisive factor for the individual contemplating membership to know that, especially in those years following the rise to power, foreign countries too were giving some evidence—I am giving only examples—of their approval. I regret, Mr. President, that I have to dwell on this subject more than perhaps was expected, but it is necessary, because the fundamentals of the defense—at least the defense of the organizations—have not yet been discussed before the Tribunal.

Then we come to Document Number SS-96. Here again it is a voice from abroad—an American journalist. Of course, I am not in a position to investigate what standing this journalist has. But again, the objective importance is that it is the voice of an American journalist whose comments were published in Germany by a well-known German publisher in a book which had a tremendous sale. This American journalist describes, in the pages which I am quoting, among other things, conditions in Germany and conditions in the concentration camps.

To summarize them, they are described as not unfavorable, and I am of the opinion that again this, in 1935, was of importance to the question . . .

THE PRESIDENT: Could you tell the Tribunal the name of the journalist?

HERR PELCKMANN: Yes; his name is Doug Brinkley, for Douglas Brinkley—D-o-u-g-l-a-s B-r-i-n-k-l-e-y.

THE PRESIDENT: Would you spell it again?

HERR PELCKMANN: Douglas—D-o-u-g-l-a-s; Brinkley—B-r-i-n-k-l-e-y. I had already said that I, of course, know this man even less than the Judges. But one must remember that after all this was published in Germany; and the average German cannot know whether there is a well-known or unknown American journalist of this name.

At any rate, he speaks in detail about conditions in concentration camps, and about the knowledge the Germans and also the SS members had. This statement is relevant because during future hearings and before the commissions I shall show, and have shown, that the knowledge of these conditions in concentration camps was confined to the very small circle of those who were occupied with them.

Finally, Documents SS-101 and 102. Here we are concerned with the question of the medical experiments on living human beings. First of all, I should like to say that I do not by any means maintain that experiments undertaken in concentration camps conform with the principles of humanity. Without detailed evidence I am not capable of passing judgment on this point; but I can prove from scientific publications of recent date that the question of whether experiments which might cause death should be carried out on living men to save the lives of tens or hundreds of thousands of human beings is, at least, argued in scientific circles and, at least according to these documents, has certainly been affirmed by well-known foreign—American and British—scientists.

In this connection, I am assuming that internees in concentration camps—as I have been trying to prove before the Commission and, perhaps, shall continue to prove—volunteered for such experiments. I must point out, however, that evidence that such experiments were carried out abroad on people who did not volunteer is supplied, in my opinion, by the wording of this statement. Document SS-101 . . .

THE PRESIDENT: Would you mind pausing there? I thought you said that they had volunteered for it.

HERR PELCKMANN: I said that those documents do not show clearly that experiments made abroad were made on real volunteers, whereas I contend and must contend that according to testimony given up to now, experiments in concentration camps were carried out on volunteers. It . . .

THE PRESIDENT: I was only asking you what these documents that you are speaking of, 101 and 102, said. Did you say that they show that the people who were experimented on volunteered for the experiments?

HERR PELCKMANN: No. I said, Mr. President, that it is different, and neither one nor the other of the documents states quite clearly what the position was. One document seems to indicate that the people did not volunteer. What appears of more importance to me is that . . .

MAJOR JONES: If the Tribunal please, I do not think that the defending counsel's statement should go without challenge. It appears from the Document 101, the report from the magazine, which is not a scientific magazine—it is the *Time* magazine, which I understand is not a work of science—that the extract is silent on the question whether the persons who were used for these experiments were volunteers. The second extract from Document 102 states quite clearly that the subjects of the experiments were volunteers.

HERR PELCKMANN: Quite right. The second document deals with voluntary experiments. The first document, however, leaves the question open. But I conclude from circumstances shown in the document that it does not seem to be absolutely certain whether there were volunteers. It is an extract from a fairly recent publication, *Time* of 24 June 1946. It deals with a new remedy for tuberculosis. American scientists carried out experiments with antituberculosis inoculations on 3,000 Indians. Half of them were inoculated with this drug. Half were given a harmless salt injection; 40 tuberculosis cases developed; 185 cases did not show any reaction, and 38 died. And these experiments were carried out on Indians who were free from tuberculosis.

The other document is a German translation of an American book, *An American Doctor's Odyssey,* written by an American doctor. In it he describes how the research worker, Fraser, experimented with the well-known disease of beriberi on criminals in Bilibid who, as the Prosecution have mentioned, earned for that a small perquisite and, if the experiments were dangerous, they could obtain a reduction in their sentence. These experiments were tried on the inmates of the lunatic asylum of Kuvala Lumpur and were carried out in the following manner: Part of the inmates were given unpolished rice to eat, and part were given polished rice. The second group of these inmates became ill. Then the two groups were exchanged, and the sick became healthy and the healthy, sick. The effect of these experiments and of the disease in general is very severe. The patients cannot leave the bed and often die of a

weak heart. I quote from this book: "I shall not forget the impression made upon me by the huge hospital for beriberi incurables at Singapore, where these poor people were crawling around on their hands . . ."

THE PRESIDENT: We do not need all the details of it.

HERR PELCKMANN: I am merely going to say that we are concerned here with a contested scientific opinion . . .

MAJOR JONES: I am intervening again. But such a sinister implication is being given by the alleged purport of these extracts by defending counsel that I really must protest. The report that is given is of the symptoms of beriberi disease; it is not an account of the result of these experiments at all. The experiments took this form: some Malayans were tested with their ordinary diet of polished rice, which is said to bring on beriberi; other prisoners were tested with a diet of unpolished rice. And it was proven that a diet of polished rice, which is their usual diet, brought on beriberi. There is no sinister import. There is no Dr. Rascher element about this.

HERR PELCKMANN: I should like finally to come to the subjective angle. It is alleged by the Defense that these experiments too were kept extraordinarily secret. And if they had become known . . .

THE PRESIDENT: We have got the essentials of the arguments.

HERR PELCKMANN: Thank you.

THE PRESIDENT: We will hear now from the United States Prosecutor with reference to the General Staff and High Command, the SD, and the Gestapo.

MR. THOMAS J. DODD (Executive Trial Counsel for the United States): Mr. President, with reference to the SD and the Gestapo we have come to a complete agreement with the defense counsel so there is no contest concerning the documents. They number some 150 pages for the Gestapo and some 80 pages for the SD.

With reference to the High Command and the General Staff, we have not been able to agree on a few documents. In the first Document Book Number 1, Document Number 5, we have objected to its translation certainly, because it has to do with the knowledge of General Busse, about the political feelings of some of the generals toward National Socialism, and it's simply his own opinion and does not purport to be anything more. Attached to it are graphs and charts and so on, and it's made to appear that it is based upon opinions which General Busse has gathered from conversations—nothing to show that he is any authority on the subject or would be in a position to know anything beyond the ordinary capacities of any other man.

Document Number 8 we also object to because again it is an instrument based upon General Winter's collection of the opinions of other people. Insofar as we can tell, General Winter made some kind of a poll—a private poll, to be sure—of his associates, and asked them what their opinions were. And he . . .

THE PRESIDENT: What is the nature of the actual document. Is it a publication?

MR. DODD: No, Sir, it is not. It is in the form of a statement by General Winter.

THE PRESIDENT: Is it sworn to?

MR. DODD: Yes, Sir, it is.

THE PRESIDENT: Busse and Winter, they are both sworn, are they?

MR. DODD: Yes, Sir, they are and they submitted their statements, these two men.

THE PRESIDENT: And what is the date of them, 1946?

MR. DODD: Yes, Sir, very recently. Sometime in June 1946.

THE PRESIDENT: What's the date of that one?

MR. DODD: One of them is July—anyway within the last 2 months.

The Document Number 9 is of the same character again. It is a statement based on written opinion. In all our statements which have been supplied by members of the German armed services, and in any case all of these statements which are affirmed to and sworn, no statement has been sworn to by themselves. The individual who makes the affidavit goes about and inquires and he, on his oath, states that these things are true or represents that they are, without showing that the persons who gave him the information have done so on an affirmation or on oath.

Document Number 11 is a newspaper article about General Marshall's report to the Secretary of War of the United States. That has already been introduced here by the Defense and our objection is somewhat technical, but I think nevertheless necessary and valuable. We feel that a newspaper extract should not be used, particularly when the document itself is in evidence, and if the counsel will only use what already is in evidence, it will have no troubles. It is Exhibit Jodl-56. We have not been able to make that clear to the Defense Counsel, so far.

Document Number 13 is again a poll, conducted by—a statement by General Winter rather, based on another one of his private polls of his fellow prisoners, concerning their attitude toward the so-called Commissar Order, and besides this matter has been handled before the Commission established by the Tribunal, and there the

matters were objected to and sustained by the Commissioners. But in any event we object again here, even to the translation, because it seems of no value at all to have General Winter's submitted statement, based on this kind of information.

Document Number 20 is a letter written by a General Seidler. The letter written by General Seidler, of course, is not a sworn statement. This is Document Number 20, and we objected to it on that ground. Besides we have very grave doubt about its value in any event.

Document Book 2 contains one document which we object to. That is Document Number 15. That also is not an affidavit, but instead it is an unsworn letter from General Von Graevenitz to General Von Kleist—it is written under the date of June 24, 1946—which, in our judgment, is of no value; and we do not see that it would be helpful in any event to the Tribunal. Other than that, we have no differences.

THE PRESIDENT: Mr. Dodd, will you tell us with reference to these documents that you object to, how long they are?

MR. DODD: They average about—from what I see of the German text—two to three pages, and attached to some are drafts. Do you mean the whole, in total?

THE PRESIDENT: Yes, take them in order, starting with Number 5.

MR. DODD: That has two pages. It is the statement with the draft attached to it.

THE PRESIDENT: What about Winter's Number 8?

MR. DODD: That's seven pages and two pages of drafts, which makes it altogether nine pages. The newspaper article about General Marshall's report, I don't know. So far, only one typewritten page. Document Number 13 is a 10-page document. General Seidler's letter is one page, and Document Number 15 is only one page. It is also a letter.

THE PRESIDENT: Thank you. Now, Dr. Laternser.

DR. HANS LATERNSER (Counsel for General Staff and High Command of the Armed Forces): There still remain certain documents which are disputed. First of all, Document Number Mil-5. The table submitted with Number 5, on Page 29, refers only to historically established facts which are graphically represented in that table in order to show their extent and the effect they had within the accused military leadership. The affidavit of General Busse, which is attached, is not intended to prove facts which are historically known in any case, but merely to explain the table. It is not, therefore, a private opinion on the part of General Busse. The admissibility of that table can therefore not be objected to.

I will take Documents Mil-8 and 9 together, because the objections raised against them are similar. The lists contained therein are meant to facilitate the Tribunal's judgment on the circle of persons falling under the Indictment. Thus we are not concerned with written statements but with lists and I am only too willing, if the technical department is too busy, to furnish the necessary number of copies of these lists myself.

The basis for these lists is Exhibit Number USA-778, (Document Number 3739-PS) which was submitted by the Prosecution on 2 March 1946. This Document USA-778 which was prepared by the Prosecution contains the names of all the persons who are said to come under the Indictment and also shows the periods during which they held office. This Prosecution document, Exhibit USA-778, does not state the source from which these details originate, therefore they are merely assertions on the part of the Prosecution. Using this Exhibit Number USA-778 as a basis, however, I asked General Winter to draw up the submitted lists, Number Mil-8 and 9, to the best of his knowledge and conscience. In contrast to the lists submitted by the Prosecution the Tribunal will be able to judge the source of these lists particularly well, for General Winter appeared personally before the Tribunal as a witness in Jodl's case. The list Number 8 contains the names of persons dead and further those of individually accused persons and those whose posts were only temporary, not permanent. According to the lists that makes 56 persons and for all practical purposes of judgment that number need not be taken into account. In this list are shown also the many cases where commanding generals were relieved of their positions on account of serious differences of opinion.

The list Number Mil-9 gives the names of 31 people who occupied positions for less than 6 months and to whom the Prosecution have referred. This document is relevant with regard to alleged conspiracy. If therefore the Tribunal desires to have a good factual basis for judging the composition of the circle of persons indicted, then these lists should be accepted. Moreover, the list already accepted by the Prosecution, USA-778, can only refer to the same or similar sources as those of the lists which I am submitting, and the lists of the Defense quote the sources and can be checked. If I had used the same method as the Prosecution, I would only have had to submit the lists without the addition of an affidavit. Therefore, I beg that these documents be admitted.

Number Mil-11 has already been accepted in the same form by the Tribunal as Document Number Jodl-56, a fact which, incidentally, I mentioned at once to the Prosecution, and attempts to make that clear to me were really not necessary.

THE PRESIDENT: Number 11 we understood was a newspaper report with reference to General Marshall's report.

DR. LATERNSER: When that objection was brought up I immediately pointed out that the same document to which I was going to refer had already been submitted during the proceedings against General Jodl. That is the Marshall report. Therefore, I withdraw this document of mine.

THE PRESIDENT: You are withdrawing it? I see.

DR. LATERNSER: Yes, as the document has already been submitted. I merely wanted to include it in my book for the sake of having it complete. Then I would just like to remark, Mr. President, that attempts on the part of the Prosecution to make this clear to me are not necessary, because I usually understand that kind of argument fairly easily.

Document Number Mil-13 is also based on USA-778 as far as the circle of indicted persons is concerned. This list, also compiled by General Winter, is meant to complete the picture proving the correct attitude on the part of the generals toward the Commissar Order. As that list—based on the list submitted by the Prosecution—and the affidavit attached to it give the exact sources, the document can readily be checked as to its worth. The objections on the part of the Prosecution may detract from its value as evidence, but the documentary character of the document cannot be destroyed; therefore, this list, too, should be admitted.

THE PRESIDENT: Hasn't Document Number 13, that is to say the subject of the attitude of the generals to the Commissar Order, already been dealt with before the Commission?

DR. LATERNSER: Yes, Mr. President, but examination of witnesses and submission of affidavits cannot give the same picture as the one I am attempting to give by means of this document. This document contains the names of the generals who belonged to that so-called group; in a special column I have marked whether the order was received and in another column whether the order was carried out, and these facts which General Winter mentions here are explained by him in his affidavit which is attached to the list itself. He goes on to quote the sources from which he had gained his knowledge, so that I can examine the sources and so the evidential value.

THE PRESIDENT: Dr. Laternser, you have called a certain number of witnesses before the Commission, have you not?

DR. LATERNSER: Yes. I had eight witnesses.

THE PRESIDENT: I suppose all of them, or almost all of them dealt with this subject. You put in a certain number of affidavits and those affidavits have dealt with this subject, have they not?

DR. LATERNSER: Yes.

THE PRESIDENT: How many affidavits have you put in before the Commission?

DR. LATERNSER: I cannot, Mr. President, give you the exact number at the moment. Affidavits have been submitted by me on only two matters.

MR. DODD: There were 72 of them, Mr. President. He put in 72 of those affidavits.

THE PRESIDENT: Well, isn't this really an attempt to extend and make more exhaustive the proof which you are submitting?

DR. LATERNSER: Mr. President, this Commissar Order no doubt is a criminal order, and I was merely trying to show clearly to the Tribunal by means of this list how well the high generals had conducted themselves on the point; I had summarized the outcome of that part of the evidence in this list. General Winter has compiled the list, so the Tribunal can decide whether this list is valuable or not. I am merely trying to say that the objections raised by the Prosecution can affect the evidential value of this document but not the document itself. I ask that it be admitted.

THE PRESIDENT: But if you put in 72 or 82 affidavits before the Commission, why shouldn't you put in this document before the Commission?

DR. LATERNSER: Well, but here we are not concerned with affidavits. Up to now only affidavits have been submitted whereas here in Document Number Mil-13, the most important thing is the list, and the affidavits which are attached are merely an appendix to that list. They are intended to give an explanation of the list. The main feature of this document, therefore, is the list and not just the explanatory affidavit, so that it would not have been admissible before the Commission.

THE PRESIDENT: Yes, Dr. Laternser, but it doesn't make it inadmissible before the Commission that it is an affidavit exhibiting a list. It could have been put in before the Commission, and if it had been put in before the Commission it would have been brought to our notice as is, of course, everything that goes before the Commission. Also, it is pointed out to me of all these documents, they could all have been put in before the Commission.

DR. LATERNSER: No, Mr. President, that point of view cannot be right. Up to now we could merely submit affidavits to the Commission and not documents. The documents were to be included in the document books, and that is what we are discussing today. This Mil-13 is a document, that is, the list, whereas the affidavit is purely of secondary character. It is merely meant to give an explanation. I ask that a decision be made.

THE PRESIDENT: Well, we hear what you say and we will consider the matter.

DR. LATERNSER: Then I wish to speak about Documents Mil-15 and Mil-20. Both are letters, the admissibility of which is of importance to me particularly since ordinary letters have frequently been admitted as evidence during this trial. I will remind you in particular of the Rainer letter in the case of the Defendant Dr. Seyss-Inquart. Then there is the letter of Generaloberst Zeitzler, dated 8 July 1946, which is Mil-20. It is important because it shows that as a result of the efforts of a general who comes within the indicted group the Commissar Order was rescinded. That is why this letter assumes particular significance for me as defense counsel of the indicted group.

THE PRESIDENT: Will you give me the dates of the letters?

DR. LATERNSER: The letter is dated 8 July 1946, and it was addressed to me. That, Mr. President, is all I have to say to the objections raised by the Prosecution.

THE PRESIDENT: Thank you. Mr. Dodd, that concludes the arguments that we need hear this morning, does it not?

MR. DODD: Yes.

THE PRESIDENT: Well, the Tribunal will consider your suggestions. I call on Dr. Steinbauer for the Defendant Seyss-Inquart.

DR. STEINBAUER: Gentlemen of the Tribunal, on Friday I was on Page 71 and, with the permission of the Tribunal, I should like to continue on that page.

From what has been said it is shown that the Reich Commissioner had to assume only a limited responsibility for the German Police, that is to say, insofar as he used them for the execution of his orders in civilian matters. When the Reich Commissioner called for their help, the Police as a rule first got in touch with Himmler. But in all matters which came within the jurisdiction of the Police, the Reich Commissioner could neither issue orders to them nor intervene *de jure* in their activity. This fact must never be lost sight of when judging the Jewish question, the concentration camps, and the deportations.

The admissibility of special courts and police protective custody is recognized even in the report of the Dutch Government. The Police were responsible for the arrests and the management of the concentration and prison camps. As explained in detail by the defendant when examined as a witness, he went to great trouble, as Wimmer and Schwebel also confirmed, to put an end to abuses he had heard about in the camps. I shall refer only briefly to the treatment of the so-called Dutch reprisal hostages in whose case the defendant was very interested, also to the fact that he succeeded

in obtaining permission for the members of the clergy who had been imprisoned in the Reich to return to the Netherlands.

Having thus briefly outlined the position of the Police and their tremendous power, I shall pass on to one of the main points of the Indictment—the Jewish question.

In their trial brief the Prosecution state that Reich Commissioner Seyss-Inquart alone bears full responsibility for the carrying out of the Nazi program to persecute the Jews in Holland, and that in his Amsterdam speech before the members of the NSDAP on 13 March 1941 he himself declared: "To us the Jews are not Dutchmen; to National Socialism and to the National Socialist Reich the Jews represent the enemy." In that speech Seyss-Inquart also explains why, as defender of the interests of the Reich, he believed he had to adopt that attitude toward the Jews. He knew them to be people who, through their influence on the German people, would paralyze their will to resist, and who would always prove to be the enemies of the German people. But this speech shows more than anything else that Seyss-Inquart considered all measures against the Jews as security measures for the duration of the war only. He speaks of his desire to create tolerable measures during the period of transition and says that after the occupation had come to an end it would be for the Dutch people to decide what was to be the fate of the Jews. It was quite natural and obvious for the Jews, as a result of the treatment they had experienced in Germany and later in the occupied countries, to become no matter what their nationality the most bitter opponents of National Socialist Germany. That had to be taken into account by every official who had to look after the interests of the Reich in occupied territories. This also makes the speech referred to in the beginning understandable. Therefore when Seyss-Inquart was commissioned by the Führer decree to safeguard the interests of the Reich in Holland, he also had to take some kind of stand on the Jewish question. It was his intention to remove the Jews from leading positions in the State and in the economic life of the country for the duration of the occupation, but otherwise to refrain from further measures against them. Actually, the measures instituted by him merely provided that those Jews who were working for the State were sent on leave or were retired with a pension.

In the meantime Adolf Hitler had transferred the handling of the whole Jewish question to Himmler, or to Heydrich, who received full powers for the whole sphere of interest of the Reich. The Security Police, dissatisfied with the dilatory way in which the Reich Commissioner handled the Jewish problem, availed themselves of their full powers and had established an office in Amsterdam, whose interference was the cause of constant friction with the deputy of the Reich Commissioner in Amsterdam. The Security

Police claimed that they were unable to guarantee the safety of the Reich, with which task they had been entrusted, unless further measures against the Jews were taken to restrict their activities in the field of economy and limit their personal liberties. English and French people had been assembled in separate camps and had been driven over the Reich border after their property had been confiscated as enemy property, which treatment Germans living abroad had likewise experienced in enemy countries. The Police made it known that very many Jews were actually involved, and often took a leading part in all the more serious attempts at sabotage and other forms of resistance. The Dutch Jews also, some of whose ancestors had come from proud Spain, and many of whom had come from Germany and the East as emigrants, had already held leading positions before the occupation in the economic field, and especially in the press, which they had used to combat National Socialism. When the enemy entered the country, they knew it would be a life-and-death struggle and, contrary to Shylock's words in the *Merchant of Venice:* "For sufferance is the badge of all our tribe," they not only placed their property at the disposal of the resistance movement but also their lives. The Reich Commissioner could not close his eyes to this fact. Because of the great number of persons involved, it was simply not possible to mete out to the Jews treatment similar to that of the English or the French or other enemy aliens by confining them in a camp. Measures restricting personal freedom of action were taken by the Higher SS and Police Leader as Himmler's direct subordinate, or by the Security Police on direct orders from Heydrich. Included in these measures was also the introduction of the Jewish star—incidentally, the Dutch did not consider this a mark of abasement. At the same time that measures affecting the freedom of movement were taken, the property of Jewish organizations and Jews was also placed under control. The Reich Commissioner appointed Dr. Bömker his special trustee and gave him the task of supervising the measures taken by the Police—insofar as this was administratively possible—and of preventing excesses. In fact, he intervened a number of times and was able to prevent unjustified police measures.

A large part of the activity of the Reich Commissioner's office was concerned with economic measures, and the description by the Dutch Government Commissioner for Repatriation, Exhibit Number USA-195, (Document Number 1726-PS) gives a clear picture of the entire Jewish problem in Holland. The chart shows that the Reich Commissioner was able to delay measures against the Jews for almost a year, and that really intensive measures did not begin until February 1941 with the formation of the Central Office for Jewish Emigration which was ordered by Heydrich and which was under the supervision of SS Obersturmführer De Funte. A

comparison with measures taken against the Jews in Germany itself and in other occupied countries shows a pronounced uniformity, which likewise indicates that the measures in question were not taken by the Reich Commissioner but were measures applied uniformly by Reich offices, in other words, by the Police. The Reich Commissioner also saw to it that Jewish property was sequestrated in an orderly manner. When it finally came to the liquidation of the property, following orders from the Berlin central offices, proceeds from the liquidation were not confiscated, but credited to the Jewish owners. Toward the end the Jewish administrative office had accumulated some 500 million guilders.

In order to put an end to the constant pressure and interference by the Police through Heydrich, the Reich Commissioner, together with the Higher SS and Police Leader, tried to stabilize the Dutch Jewish question by assembling the Jews affected by the restrictive regulations in two districts of Amsterdam and in two camps, where they were to live under their own administration. One of the camps was Westerborg, where they had a Jewish camp police of their own. On the outside, the camp was under the supervision of the Dutch police. When, in the spring of 1945, it was taken by the Canadians, the British radio reported that they found the Jews housed there to be in good condition, unlike the state of affairs in other camps which were found outside Holland. The second confinement camp was to be Vught. Himmler made a concentration camp out of it. The Jewish community of Amsterdam was under the direction of Ascher, a merchant who dealt in precious stones. Funds were made available to the Jewish community, especially for school purposes; negotiations were carried out with firms to provide work in the Jewish quarters. At the beginning of 1942 Heydrich, or rather Himmler, demanded the transfer of the Dutch Jews to assembly camps situated in Germany. Both referred to the full powers given them by the Führer and pointed out that sooner or later an invasion had to be expected. Holland seemed a likely territory, because the ports of Rotterdam and Amsterdam provided suitable supply bases, and from there the British would take the shortest route to the Ruhr, the industrial center of Germany. To permit so many people extremely hostile to Germany to remain in a territory which would see future operations in the battle against Britain was inconsistent with the safety of the Reich. The Police were adamant and all the Reich Commissioner was able to do was to take steps to make the evacuation by the Police more humane. The Reich Commissioner succeeded in getting thousands of Jews exempted so that these people were able to remain in Holland. The defendant got his agents to inspect the internment camps and, insofar as he was able to do so, he managed to have bad conditions remedied by the intervention of the Christian

Church. The order for the evacuation was not given by the defendant but by Himmler or Heydrich. The defendant did not even give his consent for the evacuation. As a result of representations by the defendant, a number of Jews were taken to Theresienstadt, which was said to be a camp supposedly under the supervision of international agencies, such as the Red Cross, and where the Jews were said to be well treated. As a result of exemption regulations introduced at the request of the Reich Commissioner, a great many Jews were exempted from evacuation. The afore-mentioned Dr. Bömker was appointed to supervise the transport of the Jews in Holland and in many cases succeeded in getting the Higher SS and Police Leader to remedy bad conditions. Most of the Jews were taken to Poland, and probably one of the most terrible sentences is that to be found in Exhibit Number USA-195—a document submitted by the Prosecution—which reads:

> "Total number of deportees: 117,000 .... After their leaving Holland all trace of them was lost. Absorbed in an agglomeration of deportees from almost all occupied countries, they can no longer be identified as a separate group."

Now comes the cardinal question of the whole Indictment, the dramatic climax in the Trial against this defendant. Did the defendant know of the fate of these many unfortunate and innocent people; did he intentionally approve of their fate or is he guilty because he did not prevent it?

Again and again, the defendant has solemnly declared, even when questioned as a witness under oath, that he did not know anything about this, and that he was of the opinion that the Jews really were going to be resettled in the East for the duration of the war.

When in 1942 or 1943 the defendant had an opportunity of speaking to Adolf Hitler himself, when he had to make a report to him, he steered the conversation round to the Jewish question. When the Reich Commissioner pointed out that the evacuation of the Jews was causing serious unrest in the Netherlands, Adolf Hitler replied that he had to segregate the Jews from the body of the German people, because they were a destructive element, and that he wanted to resettle them in the East. When Himmler, the Chief of the SS and of the German Police, was questioned by the defendant at the beginning of 1944, all he said in answer to the Reich Commissioner's apprehensions was that he should not be worried about his Jews, his Dutch Jews were his best workers.

The government representatives who had been sent to inspect some of the camps returned with the report that the Jews were getting along well and that they were satisfied. News from the deportees reached the Netherlands at regular intervals, although

it became less frequent as time went on. Now that the heavy curtain which concealed the horror of these mass murders has been lifted, we know the circumstances and the truth. The scrupulously careful probings in this Trial especially have revealed the diabolical manner in which Hitler and Himmler knew how to disguise and conceal their criminal intentions concerning the final solution of the Jewish question. When I read the Dutch report about the Jewish question for the first time, I myself was deeply moved. This is the document which, together with the so-called Hossbach document—the last will of Hitler of the year 1937—I have especially submitted to my client. As for the Hossbach document, in which the evacuation of 1 million Austrians was demanded, Dr. Seyss-Inquart told me that he had never seen it and had also never heard of it. He said: "If I had known about such intention I would never have been a party to it."

Also when I submitted to him the document concerning the Jews, he told me in a way which convinced me that at the time he knew nothing about the "final solution" and the happenings in the extermination camps. When I then asked him why he did not resign when he found he could not prevail upon Himmler and his accomplices, especially concerning the Jewish question, he told me that, after all, I too, had been a soldier and knew that a soldier must not desert in wartime. He had arrived at the conclusion that if he had remained in his post, quite apart from his other tasks, it was because he doubted very much that the Netherlands would fare any better under a successor.

As a defense counsel and jurist, I must add the following: One could not know of the measures of extermination which the Prosecution have mentioned. If extermination did take place to the extent alleged, then these are the acts of a special group of Himmler's hangmen resulting only from a desperate situation. But in penal law, the principle applies that the causal nexus is interrupted if an independent criminal act interposes. This is the case here. Before I conclude the most difficult chapter of the whole Indictment I should still like to examine the question, as to whether the statement of the defendant, that he actually could not have had any knowledge of the terrible crimes which were committed in the extermination camps, is, in fact, credible . . .

THE PRESIDENT: Wouldn't that be a convenient time to break off?

[A recess was taken.]

THE PRESIDENT: I will deal with these documents. The documents objected to in the case of the SS, 69, 85, 86, 96, 101, and 102, are all disallowed.

In the case of the SD and the Gestapo all the documents are agreed.

In the case of the High Command, the Tribunal allows the Documents 8 and 9 to be translated and put in the document book. Number 11 is withdrawn. Numbers 5, 13, 15, and 20 may be submitted to the Commissioners, but they will not be translated for the document books. That is all.

Now, Dr. Steinbauer.

DR. STEINBAUER: I continue.

First of all I should like to present the testimony of a French medical doctor, who himself was a prisoner in an extermination camp for a long time. This is Dr. Goutbien from Montgeron (Seine-et-Oise), who writes:

"It is difficult for a normal human being to picture exactly what a concentration camp, which is designated in the German language by the two letters 'KZ,' is like.

"It is difficult for various reasons: First of all, a man brought up according to the principles of our civilization, which is based on the elementary Christian humanitarian doctrine, cannot believe the statements made by the victims of so many atrocities; the sadism, the exaggerated refinement used in causing suffering, go beyond the normal powers of feeling; moreover, the Nazis tried to conceal their crimes in a hypocritical way, so that a foreigner who might have inspected a concentration camp 2 or 3 years ago would have been impressed by the order and cleanliness.

"If a jurist had examined the execution cases, he would always have found at least sufficient reasons, if not valid ones, for their justification. Finally, if a doctor had searched for medical records, he could very easily have concluded that the causes of death were normal.

"So heavy was the curtain which covered the concentration camps, so careful were the SS to see that it was so kept—and so jealously did they guard the secrets! The SS tried to give a legal appearance to their crimes. We have here a characteristic feature of Hitlerian hypocrisy."

The Jesuit, Father Küble, also expresses himself in a similar vein in his book, *Die Konzentrationslager, eine Gewissensfrage für das deutsche Volk und für die Welt (The Concentration Camps—a Question of Conscience for the German People and the World).* He writes, Page 19:

"... and he believed it possible to prevent discovery by an absolutely impenetrable ring of silence with which he surrounded his works. This ring was so tightly drawn that a

German had to travel abroad to learn something concrete about the camps and to read there about these 'Soldiers of the Marshes' (Moorsoldaten). At home books like these did not exist, and one learned only very little from hearsay. Nobody came out of the worst camps, and the wrongdoers themselves were 'liquidated' from time to time, so that they could not tell anything. But the few who got out of the less terrible camps were so intimidated, that they gave only quite general, obscure hints—just enough to create in the entire people a general feeling of horror of these mysterious places."

But even the little which went from mouth to mouth never came to the knowledge of higher officials of the Third Reich, for if they followed up these things, the Police learned about it and took care to see that the bearers of such "atrocity propaganda" kept silent. Therefore, as time went on one refrained from telling anything to these officials.

But the most important testimony is that of one who knows, who himself had an active share in the liquidation of the Jews. On 25 June 1946 Dieter Wisliceny, the special representative of Eichmann, who was in charge of the liquidation of the Jews, was questioned as a witness by the appointed judge of this Tribunal. He stated that commissions of the International Red Cross or foreign diplomats were conducted to Theresienstadt in order to make it appear that conditions were normal. The Jews who were brought to Auschwitz were forced to write postcards before they were murdered; these postcards were then mailed at long intervals in order to create the impression that the persons were still alive.

He invited various representatives of the press. To the specific question, "Under whose jurisdiction is the Jewish question in the occupied countries, under the commander of the Order Police, the Security Police, or the Security Service?" he gave the answer: "According to my knowledge, the Jewish question in the other occupied countries is an affair of the Higher SS and Police Leader, according to a special order by Himmler."

In order to make the deception even greater, 500 Reichsmark, for instance, would be demanded from the Slovak Government as settlement contribution for every Jew. I confronted the defendant with this, and he told me that Himmler also demanded from him a settlement contribution of 400 Reichsmark for every Dutch Jew. As Reich Commissioner he refused this, because of the inadequate information about the actual settlement of the Jews. Also he argued that the final settlement would have to be left over until the peace.

During his examination the defendant, of his own accord, mentioned individual cases of sterilization. The applications I made

to have the letters written by Seyss-Inquart to Himmler procured as evidence, taken in conjunction with the statement of the defendant, show the following facts:

Contrary to the statement of the then 18-year-old informant Hildegard Kunze, Seyss-Inquart never reported through any sort of official channels to Himmler about the Jewish question. What happened was that Seyss-Inquart asked Himmler not to aggravate the situation of the Jews in the Netherlands any further, referring in this connection to the measures which had been carried out in the meantime against the Jews and which exceeded the measures in the Reich, and at the same time pointing out the cases of sterilization.

Seyss-Inquart took an immediate stand against the sterilization of women and made a statement to the Christian Churches that no coercion must be exercised. As a matter of fact, after a short time there were no further cases.

As regards the case itself, the defendant can only be made responsible insofar as he did not take an immediate stand against it, without being sure of course of being able to prevent the action. The reasons for the attitude of the defendant are given in the letter which it was requested should be put in evidence. He was worried that the position of the Jews should be made even worse and supposed that these Jews would be spared further attention from the Police in the future.

In any case, insofar as measures against the Jews went through the defendant, they were taken only as measures against hostile foreigners, for reasons which the defendant mentioned in his speech of 21 March 1941 in Amsterdam. Whatever happened beyond that was the express order of the Reich Central Agencies, especially Heydrich, and was mostly carried out by organs of these Reich Central Agencies themselves.

A further count of the Indictment is the assertion that the defendant as Reich Commissioner, in pursuance of the planned policy to weaken and exterminate the peoples of the occupied countries, had deliberately neglected food supplies for the Dutch, and this finally brought about a hunger crisis.

Such allegations appear to be refuted by the testimony of the witnesses Dr. Hirschfeld and Van der Vense, as well as by the statements of the defendant himself. In the interests of the population the whole machinery of food supply was from the very beginning under Dutch direction, although it was known to the Reich Commissioner that it was particularly in this field that leading cells of the resistance movement had established themselves. The food supply in the Netherlands was certainly not worse than in Germany, from whom they even received supplies of grain. As late as 1944

the ration amounted to 1,800 calories and before that 2,500 calories, which was supplemented by a great variety of things.

The Reich Commissioner succeeded in putting a stop to the knapsack traffic of the Armed Forces, which was mentioned in the cross-examination, by intervening with the Reich Food Estate—even if it was not until 1943.

How much was done by the defendant to improve the food supplies of the Dutch, for example by developing the northeast polders, and by resisting the excessive demands of the Reich, is confirmed by the witness Van der Vense.

That the Dutch production of nitrogen could be reserved for Dutch agriculture until September 1944 is due exclusively to the defendant. From the autumn of 1944 on, the situation with regard to food supplies deteriorated considerably. Most of the country was in the fighting zone after the invasion, and the traffic routes had been smashed by countless air attacks. This created a very difficult food situation, particularly in the west of Holland, where millions of people were crowded into a small area in three large cities. In view of the small number of occupation troops, it would have been an egregious blunder to drive these crowded masses to desperate resistance by planned starvation.

When in September 1944 there was a strike of railway men and barge men, engineered by the London exile government, which was counting on a favorable outcome of the battle near Arnhem and a German collapse in the very near future, this, seen under the aspect of international law, was a state of emergency in which the country had placed herself vis-à-vis the occupying power. It was only natural that the Wehrmacht used all available shipping space for its own defense and to secure its food supplies.

In order to avoid repetition, may I refer to the testimony of Van der Vense and Dr. Hirschfeld and stress the most important point, namely, that the witness Dr. Hirschfeld testified that on 16 October 1944 the Reich Commissioner had already given the order for lifting the ban on shipping traffic. He could have reckoned with the fact that a blockade of 4 weeks, which was not intended as a reprisal, would not cause any damage, because sufficient foodstocks were available or could be sent into Holland in the months of November and December, but what he really did was to lift the embargo at an earlier date, organize emergency transport and import food from the northeastern provinces, using for this German transport.

The failure of the Dutch transport system, the constant day and night enemy air attacks, the acts of sabotage by the resistance movement, and finally the serious coal shortage hampered the supply operations, so that the state of emergency caused by the strike

cannot in any way be laid to the charge of the defendant as a criminal offense.

In any case, the statistics submitted by me showed that during the entire period of the occupation, until the middle of 1944, the population steadily increased, and that general standards of living in spite of wartime conditions did not deteriorate to any considerable extent.

As the food situation deteriorated more and more because of the war, the defendant arranged for food to be brought in by German trains, and also made food available for children from German Wehrmacht stocks. He supported the welfare work of the churches and of the Red Cross, although the Geneva badge was often misused by the resistance movement. The Crown Prince of Sweden, as President of the Swedish Red Cross, expressed his special thanks to the Reich Commissioner. Finally, the Reich Commissioner contacted the Dutch Government-in-Exile through their confidential agents, and in this manner brought about an agreement with the Allied High Command, whereby supplies of food for Holland were secured and the occupation actually brought to an end.

In Allied military circles at that time one still expected the resistance to continue for another 60 days. The German occupation troops in the Netherlands would certainly have been able to hold out for this length of time, but this would have meant that the country and its population would have perished.

I come now to the last count of the French indictment, that of the floods and destruction caused by the occupying power. Even if the Prosecution had not brought up this point, then I, as his defense counsel, would have discussed this matter before the Tribunal, because it is this point perhaps more than any other which makes the defendant appear in another light—a very favorable light. In referring to the testimony of the witnesses Wimmer, Schwebel, and Dr. Hirschfeld, also that of General Von Kleffel, I should like to make the following brief statement: The Tribunal are perhaps aware that 40 percent of the total area of the Netherlands lies below sea level. In the course of centuries of hard work the land was wrested from the sea and converted into fertile farming land. Mighty dikes protect the land; locks and pumping installations regulate the entry of water and traffic on the inland waterways. The constant struggle against storms and water have made Dutchmen a proud and freedom-loving people. "God has created the earth, but we have created our country ourselves" says a Dutch proverb.

When the Canadian troops thrust toward the north, the Reich Commissioner did not take the road back to the Reich from

Groningen, as many people expected him to do, but returned to The Hague in order to carry out his task until the end. He feared that the collapsing Reich might adopt a policy of desperation which would lead to the destruction of a country as vulnerable as Holland, where there were 271 people to the square kilometer.

The legendary battle of the Goths in which everything is utterly destroyed became an obsession with many. It was Goebbels who said in his boastful manner that if they must go, they would slam the door with such a bang that the whole world would hear. The Reich Commissioner warned the people against such ideas. In fact, the "scorched earth" order was given and it would have meant the destruction of all technical installations in Holland, including dams and locks, and laying waste two-thirds of the country. Acting together with Minister Speer and Dönitz, he prevented all this. This has also been confirmed in my questionnaire by the commander, General Von Kleffel, and acknowledged by a U. S. Army Chief of Staff, Bedell Smith. Historical monuments were also to be destroyed, as has been testified by Schwebel.

The defendant's counsel of General Christiansen has informed me that in addition to the technical troops of the Armed Forces who dynamited and flooded those installations which military necessity justified, Himmler sent his own men to carry out destruction behind the backs of the Armed Forces. All this was prevented by the Reich Commissioner who, conscious of his responsibility, intervened, and the country was spared enormous devastation.

In May 1932 a simple memorial was placed on the dam of the Zuiderzee, the largest dam ever constructed, which bears no name—only the words: *Een volk dat leeft, bouwt aan zijn toekomst* (A nation that lives builds at its future).

Regardless of how the Trial may end, perhaps the day will come when under this proverb the words will be added: "Saved from destruction by Seyss-Inquart."

Thus I come to the end of the second point of the Indictment.

Slowly the curtain falls on the drama of the alleged conspirators. But I ask you: Can one call that man a cruel and ruthless despot and war criminal, who in the middle of the life-and-death struggle of his nation is placed at the head of the administration of an enemy country and yet tries again and again to prevent excesses or to moderate them?

However, I would not wish to conclude my discourse without expressing some general remarks on the Trial. I esteem France and her cultural tradition, and I have considered it an honor to be allowed as an attorney to cross swords with Frenchmen in these proceedings. I have listened to the speech of the Chief Prosecutor

for France, M. François de Menthon, with close attention and sympathetic interest. However, it cannot remain entirely undisputed that M. De Menthon has described Germany as the eternal enemy of France and demanded the severest penalty, death, for all defendants without exception. He thereby brings out one of the weaknesses of this Trial, namely, that it will always be the trial of the victors over the vanquished. One is reminded too strongly of the Gaul, Brennus, who with his *"vae victis"* throws the sword into the scale. M. De Menthon with this demand unintentionally obstructs the road to a lasting peace.

The sin against the spirit is the basic error of National Socialism and the source of all crimes, says M. De Menthon; National Socialism is based on racial theory, a product of German mentality. But M. De Menthon rightly explains that National Socialism is the final stage of a doctrinaire development over a long period. There are no direct transitions in history, but all is rooted in preceding ideas and undercurrents. The events of the twentieth century can only find their explanation in the developments of the preceding century. The closing years of the nineteenth century saw the birth of an exaggerated nationalism, and here it must be said that it was not the Germans, but the French who first established the racial theory, for instance, Count Gobineau in his essay *Sur l'Inégalité des Races Humaines* and Georges Sorel in his *Réflexion sur la Violence.*

At the end of his statement M. De Menthon quotes the book by Politis, *La Morale Internationale,* which I have also mentioned. Politis describes this exaggerated nationalism as a veritable international malady, deriving from the nineteenth century. He mentions particularly the case of the Frenchman Maurice Barrès. He sees in the phrase, *La patrie eût-elle tort, il faut lui donner raison* (my country right or wrong), the negation of all ethical laws.

I would like to confront M. De Menthon with another Frenchman. He is an obscure professor of history. With the Gestapo, the German and the French police on his track, he frequently changes his appearance and his name. He is everywhere; we find him in the Massif Central, in Auvergne, in the mountains near Grenoble, at Bordeaux on the coast, and in Paris. Wherever he appears Wehrmacht trains are derailed, ammunition dumps blown up, and important industrial plants shut down. He always remembers the words of De Gaulle: "Our country is in mortal danger, join us, everybody; fight for France!" The name of this man is Georges Bidault. The first thing he did after the enemy had been driven out of the country was to visit severely wounded soldiers in the hospitals. But he does not only go to the Frenchmen, he also visits the German wounded in their wards, and says to them: "Comrades, I wish you speedy recovery and a happy return to your homes." These words of the man who today is the leader of France show

us the path to peace by the honest and frank collaboration of peoples and nations.

Hitler wanted to create a new Europe; in this he failed because of his methods. Germany lies defenseless, her towns are destroyed, her economy shattered. France, one of the oldest countries of Christendom, the country which at the end of the eighteenth century proclaimed the Rights of Man, has today the special mission and responsibility of saving western civilization. To achieve this, however, it is necessary that distrust, which poisons the life of all peoples, should disappear. I thus conclude my very brief and general remarks on the Trial.

Honorable Judges, into your hands I confidently commend the fate of my client. I know well that you will consider carefully all the facts which speak for Seyss-Inquart. But I will walk once again through the streets of Nuremberg, as I have done so often during the long months of this Trial, and from the ruins of the imperial castle look down on the German countryside. From the ruins of the old city rise, scarcely damaged, the monuments of the painter Albrecht Dürer and the geographer Martin Behaim. They are the prophets of German art and science. May those two names be symbols for the future, and like beacons guide the German people from dark misery to the shining realms of a lasting peace.

THE PRESIDENT: The Tribunal will adjourn for a few minutes.

[A recess was taken.]

THE PRESIDENT: I call on Dr. Bergold for the Defendant Bormann.

DR. FRIEDRICH BERGOLD (Counsel for Defendant Bormann): Your Lordship, Your Honors: The case of the Defendant Martin Bormann, whose defense the Tribunal has commissioned me to undertake, is an unusual one. When the sun of the National Socialist Reich was still at its zenith, the defendant lived in the shade. Also during this Trial he has been a shadowy figure, and in all probability, he has gone down to the shades—that abode of departed spirits, according to the belief of the ancients. He alone of the defendants is not present, and Article 12 of the Charter applies only to him. It seems as though history wanted to preserve the continuity of the *genius loci* and to have chosen the town of Nuremberg to be the scene of a discussion as to whether the fact that a defendant is allegedly no longer alive, can obstruct his being tried *in contumaciam, in absentia.* In Nuremberg we have an adage which has come down to us from the Middle Ages, and which says: "The Nurembergers would never hang a man they did not hold." Thus,

even in former times they had an excellent way in Nuremberg of dealing with the question as to how proceedings can be taken against a person in his absence.

THE PRESIDENT: It appears to the Tribunal that you are now about to argue first of all that the Tribunal has no right to try the Defendant Bormann in his absence, and secondly that if it has the right it is not advisable. Both these points were considered on the 17th of November 1945, and were decided on the 22d of November 1945, after you had been appointed; and both were decided in favor of trying Bormann in his absence. That is to say that the Tribunal has the power under Article 12 of the Charter and that it was in the interests of justice in the circumstances to conduct a hearing in his absence.

DR. BERGOLD: That is true, Your Honors. I know of this decision. I should only like to ask whether in the course of the proceedings points of view were put forward which might have caused the Tribunal to change this decision, for I assume that decisions of the Tribunal can be reconsidered by the Tribunal themselves. If I put forward this point it is to show that the Trial here has brought out some points of view which call for a reconsideration of the question.

THE PRESIDENT: Dr. Bergold, surely this is an inappropriate moment at which to advance this argument when we have already conducted the trial of Bormann. We have given you over a long period the opportunity to make application for a reconsideration of this decision.

Are you not hearing what I say?

DR. BERGOLD: I did not quite understand the last sentence.

THE PRESIDENT: I said that to make such an application now is far too late. You have had all these months since November in which you could have made such application for a reconsideration of the decision of the Tribunal. But instead of making it, you proceeded with the defense of the Defendant Bormann.

Possibly you have your disk wrongly set. Would you look at the disk and see whether it is all right?

DR. BERGOLD: Mr. President, the translation is coming through so badly and indistinctly that I cannot fully understand your meaning. The translation is bad. It is only the German translation of what you are saying that is not sufficiently clear.

THE PRESIDENT: I shall speak very slowly. What I said was that if you wished the Tribunal to reconsider the decision of the 22d of November 1945, you should have made application earlier. Instead of that, you went on to appear as the representative of

Bormann, and the Tribunal decided to hear the case against Bormann. Therefore, they are not prepared to listen to this argument for the reconsideration of their decision now.

If you think it in the interests of your client, the Tribunal has no objection to this document's being filed—or to the filing of these pages of your speech. But the Tribunal does not propose to reconsider its decision.

DR. BERGOLD: Mr. President, one piece of evidence did not come up until the end of my case—the testimony of the witness Kempka. In my opinion, this statement by the witness Kempka made the probability of Bormann's being dead so evident that only from this point of view can the question of a reconsideration be brought up. I assumed . . .

THE PRESIDENT: All I was saying was that from Page 1 to Page 10 the Tribunal will not hear that read. The question of whether Bormann is dead or not is a question with which you deal later in your argument, and the Tribunal will hear you upon that. But from Page 1 to Page 10 the argument does not deal with the death of the defendant.

If you will begin at Page 10, with the words, "I cannot . . ." it is the last paragraph on Page 10—the Tribunal will hear you.

DR. BERGOLD: Then I must submit to the decision of the Tribunal.

Gentlemen of the Tribunal:

I cannot and I will not criticize the Charter. In bringing forward my argument, which the Tribunal will not hear, I merely wanted to establish the fact that the Charter has created a novel procedure in that, in a trial *in absentia,* a final decision is being made, without its being possible to reconsider the case, should the defendant be found. But in my modest opinion, in consideration of this quite novel procedure in the legal history of all times and of all countries, the Tribunal will at the present stage of the Trial and in view of the proof brought by the witness Kempka, make further use of the right given to it by Article 12.

As a reconsideration of the decision is no longer possible, the proceedings, in my opinion, should only be carried out if, by a suitable application of the clear principles of Russian law, it is first proved that the Defendant Martin Bormann is willfully evading the Trial, and secondly that there is no doubt whatsoever about the facts. As the Charter does not stipulate more clearly when and under what conditions the Tribunal may enforce its right, the Tribunal itself must create the law.

Owing to the incontestable nature of the sentence, the Tribunal's responsibility in this particular case is a very heavy one. My

opinion that the sentence is final is also shared by the Tribunal, as in the last phrase of the public summons against the Defendant Bormann it is stated explicitly that, should the defendant be found guilty, the sentence will be carried out without any further procedure as soon as he is found.

But in my opinion it has not been proved at all that the defendant is willfully fleeing justice. I think that, as revealed by the examination of the witness Kempka, it is even highly probable that the Defendant Bormann is already dead. Witness Kempka has stated that on the night of 1 to 2 May 1945 he, together with State Secretary Naumann, who led the way, followed by the Defendant Bormann and Standartenführer Dr. Stumpfecker and himself, had tried to flee through the Russian lines by keeping close to the left side of an advancing tank. Bormann was walking close to the middle of the tank, so that the witness thought that Bormann was holding on to the tank. It seemed to the witness that it was necessary to do this in order to keep pace with the moving tank. Having advanced some 30 to 40 meters, and after having passed the German tank barrier, this tank was blown up, presumably by a direct hit from an anti-tank grenade.

The witness observed, without there being any possible doubt, that in the immediate vicinity of the tank, just where Bormann had been walking, a spurt of flame came from the exploding tank, knocking down Bormann and State Secretary Naumann who was walking immediately ahead of him. Thus Bormann found himself in the center of the explosion, which was so violent that the witness is convinced that there can be no doubt that Bormann died from its effects. It cannot be maintained that since the witness escaped the violence of the explosion Bormann also must have come out alive. It should be noted that Kempka was running behind the tank on the left hand side and thus was at a distance of some 4 meters from the explosion. Furthermore, he had additional protection due to the fact that Dr. Stumpfecker was running in front of him and his body was hurled against him by the explosion and served as a cover. Kempka has testified that Bormann was wearing the uniform and the rank insignia of an SS-Obergruppenführer at that time.

Even if Bormann had not been killed on this occasion he would certainly have been so seriously wounded that it would have been impossible for him to escape. Unquestionably he would have fallen into the hands of the Soviet troops who, according to the affidavit of the witness Krüger, were quite close to the Reich Chancellery and had occupied it already on 2 May 1945, the defenders having fled. In view of the loyal manner in which the U.S.S.R. is taking part in these Trials, they would have delivered Bormann to the Tribunal for trial.

There are only two possibilities—at least in my opinion—namely, that the wounded Bormann fell into the hands of the U.S.S.R.—having been proved not to be true, there remains only the second possibility—namely, that Bormann lost his life. I am therefore of the opinion that I have showed that there is sufficient proof to believe that Bormann is dead.

In my opinion, one should not be allowed to say that a man is presumed to be alive until death is established with absolute certainty, a presumption which I, the defendant's counsel, would have to refute. The legal assumption of a person's being alive has been valid in all countries of the world but only in the field of civil law, and only for the purpose of regulating matters relating to inheritance or the property of married persons. However, a legal assumption of a person being alive has only very seldom been established, for instance, in common law and in the Prussian law, and even there it is contested.

The Civil Code makes no provision at all for the assumption that a person is still alive; it merely admits a declaration that a missing person is dead in the eyes of the law. Common law neither provides for a declaration of the death of a person nor for the legal assumption of a person's being alive. Russian law permits, after a short period of time, the declaration that a missing person is dead in the eyes of the law, and this may be followed by the declaration of the person's death. But neither of these rulings justifies the assumption that a person may be alive.

Whatever may be the case in civil law, it is nevertheless a fact that there is no provision in the criminal law of any country for the assumption that a person is alive. If criminal law does not recognize the assumption of a person's being alive, then it is not my duty either to refute such an assumption of a person's being alive. It must then suffice that the Defense should prove, as I have already done, such circumstances as could lead one to conclude, after reasonably evaluating the chances in the usual course of life, that a defendant is dead.

I am, therefore, most definitely of the opinion that the death of the Defendant Bormann has been proved with sufficient probability; in fact the probability is so great that the proceedings should be suspended for all time, since the Charter, too, does not recognize proceedings against a dead person. If there were such a thing as the trial of a wrongdoer after his death the Prosecution, according to all logic and reason, would have had to indict the real heads of National Socialism.

But apart from all this, it is not at all proved, in my opinion, that the Defendant Bormann is intentionally evading trial as long as the possibility exists that the defendant is dead. It is true that

the Charter does not recognize such an assumption in the proceedings against a defendant who cannot be found. The Charter is very reserved on this particular point and I have already stated that I am convinced that following the hearing of the witness Kempka the Tribunal should once more examine very carefully whether they should exercise their right in this special case of the Defendant Bormann. Considering the finality of the verdict it seems to me fair and just in the case of Bormann to consider the general legal principle of all civilized countries, by which a defendant must be guaranteed a hearing even if only after his arrest. Thus, by suspending the proceedings now, one would avoid creating accomplished facts so long as it is still possible that Bormann's absence can be excused.

May I point out in this respect that in the second part of Article 12 of the Charter, the Tribunal refers expressly to the interests of justice that they should consider, in examining the question, whether they intend to take proceedings *in absentia* for any other reason than that the defendant cannot be found. These interests of justice are not unilateral and are not directed against the defendant only. True justice is always universal and demands in all legal systems of the world that, as far as that is possible, the interests of the defendant shall be protected as well.

Owing to the state of health of the Defendant Krupp, the Tribunal has already exercised their right not to try a person *in absentia*. Even if this last-mentioned case cannot be compared with that of the Defendant Bormann, this decision should be given consideration in the present instance, too.

Having in view the peculiar character of the case and the testimony of the witness Kempka, it can by no means be considered as proved that the Defendant Bormann is deliberately absenting himself from the Tribunal, for in whatever way the matter is viewed one cannot dismiss the possibility that—even if he had been rescued and had not fallen into the hands of the Allies—he may have suffered such serious lasting injury that he is neither physically nor mentally able to surrender himself to the Tribunal. In my considered opinion it is precisely for this reason that the Tribunal in the interests of true justice should suspend proceedings against the Defendant Bormann even now.

Such a decision, however, is also justified according to the second principle, which was formulated by the Russian law, namely, that proceedings shall, as a rule, be admitted only if the facts of the case no longer leave any room for doubt.

The Defendant Bormann is absent. He has not been able to defend himself against the charges for which he is indicted. He has not been able to give me any information, neither could I find

any witnesses who know the circumstances sufficiently well, and who would have been able to disclose to me any exonerating evidence concerning the accusations made.

During the course of these long proceedings the man Bormann and his activity have remained shrouded in that obscurity in which the defendant, by his predisposition, held himself during his lifetime. The charges which many codefendants have made against him, perhaps for very special reasons, and obviously in order to assist their own defense and exonerate themselves, cannot for reasons of fairness be taken as the basis for a judicial decision. The Prosecution has stated on more than one occasion through its representatives that the defendants would seek to throw the chief blame upon dead or absent men for the acts which are now being judged by the Tribunal. In their pleadings some of my colleagues have followed these tactics of the defendants. Perhaps it was right to do this. I cannot judge. Besides, I have no authority to form a judgment.

But nobody knows what the Defendant Bormann could have said in answer to these men if he had been present. Perhaps he would have been able to show that all his activities were not the cause of the happenings arraigned in the Indictment, also that he did not possess the influence which is imputed to him as the Secretary of the Führer and of the Party.

It has always been a well-known fact that secretaries and chiefs of central chancelleries, in the same way as valets to princes in the times of absolutism, were attributed a considerable influence upon their superiors and lords, for in the nature of things everything which can only be handled officially must pass through the hands of this secretary. But what in a modern state can evade the Moloch of bureaucracy?

The document book and the trial brief presented by the Prosecution contain no conclusive evidence that in the incriminating events and measures Bormann personally had any effective and outstanding influence on the actions and dealings of the Third Reich, of the NSDAP, or even of Hitler himself nor of how strong that influence had become.

In the comments on the Bormann decree, reproduced in Volume II of the official collection of *Verfügungen, Anordnungen und Bekanntgaben der Parteikanzlei,* Page 228, submitted as Document Number Bormann-11 in my document book, it is stated that the Party Chancellery was an agency of Hitler, which he used for directing the NSDAP. Stress is laid on the fact that on 12 May 1941 Hitler again assumed full and complete responsibility for the leadership of the Party. The Chief of the Party Chancellery, at that time Bormann, had been charged with keeping Hitler continually informed about the work of the Party and to bring to his knowledge

any circumstances about which he should know when making decisions in Party affairs. This had to be done according to Hitler's basic directives, and the Chief of the Party reserved for himself the right to determine these, especially as far as political affairs were concerned.

Thus it followed that the Party Chancellery was the central chancellery for matters concerning the home policy of the Reich leadership, and through this channel all suggestions and information from below were passed upward to Hitler and all directives from Hitler were passed down through it to the lower levels.

THE PRESIDENT: The Tribunal will adjourn.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

DR. BERGOLD: It is true that a man in a position such as I described to you this morning can have great influence, if there is a man at the top who can be easily influenced; but it is equally correct to say that a man in such an office can play a purely formal role as the head of a liaison agency, if at the top there is a dictatorial autocrat who cannot be influenced and if the chief of the office has no special ambition nor any special abilities.

The proceedings which have been held for many months here have shown which of the two alternatives is more likely. It is obvious that, seen from lower levels, the head of the Chancellery would appear influential even in the case of the second alternative, because everything goes through his hands and because any blame arising from subordinates passes through his agency and because all mistakes which arise in the vicinity, committed by other officials, are reported there. These officials and subordinates, however high a rank they may have held, and even though in part they may have feared the chief of the Party Chancellery—perhaps indeed only for reasons originating in their personality or their errors—these are not the right people to enlighten us as to which of the two alternatives described is the proper one. As long as Bormann does not appear and is not heard, personally, the true part he played remains obscure. Nobody, not even the High Tribunal, could ever pass just sentence. All the facts remain dubious. They remain dubious even in the individual points. I would like to demonstrate this by just a few examples.

My esteemed colleague of the Defense, Dr. Thoma, has stated that Bormann prevented the Defendant Rosenberg from following his policy. To make his point he referred to the memorandum of Dr. Markull, submitted as R-36. But this document is nothing more than a comment on an unknown and unproduced Bormann document. Markull declares *expressis verbis* that he put Bormann's formulations into the language of a simple member of the German civil service and presented them more pointedly. Only Bormann could enlighten us in this case and tell us whether he wished his writing to be understood in this way at all or whether Markull twisted the meaning and sense of Bormann's words, so that only Bormann could disclose whether this writing, like almost all the Bormann documents submitted, did not simply transmit the utterance of another Reichsleiter or of Hitler. So this very case, too, seems altogether doubtful. An explanation can hardly be expected. Furthermore, it must be pointed out that almost all the documents which the Prosecution have gathered in their document book are, in general, mere reproductions and publications of a Hitler decree or a Hitler instruction. Bormann transmitted these instructions to

the subordinate agencies with an accompanying letter in order to inform the agencies concerned. This is an activity which, as office work, has to be done even under the most reprehensible and tyrannical despotism; how much more so in a modern state like the National Socialist Reich. Someone has to forward all the instructions and orders to the subordinate agencies; that is a purely formal activity. It is immaterial whether it is done by a plain office assistant or by a brilliant Reichsleiter.

The official transmission of such instructions—I mention for example the Documents Number 069-PS, 1950-PS, 656-PS, 058-PS, 205-PS, and even the famous Document Number 057-PS—can only be considered a transmission of directives and opinions of Hitler; from such a method of transmission nobody can draw the conclusion that the forwarding party had any influence on the decrees, orders, and decisions. It is possible, but it has not been proved with certainty.

But before a sentence is passed, this question of influence should be entirely clarified. Because even if one could see any offense in the transmission of an order, according to Chancellery routine—whereby one would even have to sentence the women who wrote such orders on the typewriter—the just verdict would have to distinguish between the extent and severity of the punishment for such clerical work; and that should fall upon a man whose collaboration was a decisive factor in causing such orders and decisions and who by his influence and advice led the chief of the state to issue them. All this is not clear in Bormann's case and continues to be uncertain. The empty statements of the codefendants, whose motives can never be entirely unveiled, to the effect that Bormann exercised great, even diabolic, influence are no proof.

The other documents of the Prosecution only prove that Bormann, in keeping with the decree of 29 May 1941, Document Number 2099-PS, and the decree of 24 January 1942, Document Number 2100-PS, arranged for an exchange of correspondence between the individual Reichsleiter and forwarded their desires and suggestions. As an example I mention Documents Number 056-PS, 061-PS, 072-PS, 205-PS, and 656-PS. Nobody can derive with certainty from these activities as a go-between, which were necessary from the administrative standpoint, the extent and true nature of Bormann's influence.

Further documents show that Bormann very often served as a mere stenographer, taking the necessary notes during Hitler's discussions with some of the defendants. This is proved by Document Number L-221, concerning the annexation of the Eastern Territories, and the Russian Document Number USSR-172. But in any case such documents do not make clear whether and in what way

Bormann influenced the policies and the measures of the Third Reich during such meetings. According to all rules, a stenographer has no influence at all. He only fulfills an automatic function.

I would not like to be misunderstood here. Far be it from me to dispute the fact that Bormann occupied quite an important position within the leadership of the Third Reich. But no clear view has emerged during this Trial as to Bormann's actual importance or to what extent it was exaggerated and vilified by the bad conscience of third parties and, finally, of what his influence actually consisted. Statements of the other defendants, which were made for their own defense, do not constitute relevant evidence. At any rate the document book of the Prosecution contains, almost exclusively, documents like those I have just examined more closely. Bormann scrupulously did only what was legal in Germany; this was revealed in the documents I submitted—for instance Documents Number Bormann-2, 3, 5, 7—in which he repeatedly pointed out to Party offices that no illegal action against Jews was permitted.

It is characteristic of Bormann's case that measures against Jews could not be proved against him personally. He never did more than forward such instructions, divulge, or publish them, as this was prescribed by law and as it followed from his position as Party secretary. Even the big conference of 12 November 1938, which was held under the chairmanship of Herr Göring and from which emanated a series of laws against the Jews, can only be brought into relationship to Bormann insofar as Bormann forwarded to Göring Hitler's instruction ordering that such a conference be held. In any case it has not been made clear at all what influence Bormann himself had on these questions. But how can a just and fair Tribunal determine the extent of appropriate punishment, if the part played, if the participation of an individual defendant in an offense, is not clearly established? Nobody can say then that there is no doubt about the circumstances of the case.

At first glance it seems to be most certainly proved by the document book of the Prosecution that Bormann was one of the most zealous in the fight against the Christian churches. Most of the documents quoted in the trial brief referred to this point. It is certainly correct to say that Bormann, because of his philosophy, was a violent opponent of the Christian doctrine. But such attitude of mind, in itself, is neither an offense nor a crime before mankind, which embraces so many different conceptions of the world and which will perhaps give birth to many more.

In modern times there are countless convinced atheists. In other countries of the world, too, there are officially recognized organizations which oppose the Christian doctrine; and at the turn of our century there were big associations in many countries which raised pure materialism to a philosophical system and openly proclaimed

the negation of spiritual facts and truths. No one can be punished for wishing to teach others the precepts of his ideology or for wanting to convert them to his point of view. The modern world still recalls the horrors of the Inquisition.

Therefore Bormann could only be punished if it were proved that he participated in a real religious persecution and not merely in an ideological struggle.

In my opinion the two most important pieces of documentary evidence which the Prosecution have produced against Bormann—namely, Documents Number D-75 and 098-PS—do not show that the Defendant Martin Bormann on his own authority undertook anything against the churches as religious institutions. The gist of Document Number D-75 is contained in the sentence which says that from the incompatibility between National Socialist and Christian ideology it must be deduced that any strengthening of existing Christian denominations and any promotion of new ones is to be avoided by the Party. It is of no importance for what pressing reasons Bormann came to such a conclusion at the end of his letter. It goes without saying that failure to support a religious concept which one opposes on philosophical grounds does not constitute religious persecution. Nobody is obliged to support a religious view. It is not fair to consider his antireligious attitude and to disregard the fact that nothing came of it.

Furthermore, it is important in this connection to note that we received only one copy of this document, a copy which a Protestant minister by the name of Eichholz made out for himself. Whether the reproduction of the contents of Bormann's statement in this document is correct in every detail has not at all been proved. In any case the document in this form does not constitute authentic evidence.

In Document Number 098-PS, which may be recognized as being authentic, Bormann takes a very definite stand indeed against the Church. It ends, however—and this is the only fact which should be considered for the verdict—by saying that no National Socialist teacher should be reproached for teaching Christian religion and even that in such a case the original text of the Bible should be used; any new interpretation of, comment on, or analysis of the text of the Bible is to be avoided. Therefore Bormann, despite his previous philosophical attack upon the Church, takes here the legal standpoint that Christian dogma may be freely propagated. Could a more loyal action ever be expected of such a strong opponent of a doctrine?

The remaining documentary evidence does not reveal any real persecution either. The fact that Bormann, on Hitler's orders, prohibited the admission of priests or of members of certain

religious associations to the Party and that, on Hitler's order, he forbade priests to be appointed to leading positions in the Party, in order to prevent dissension, is not religious persecution. The fact that during the war he demanded that the Church make the same financial sacrifices as other state institutions does not represent a criminal act undertaken for religious reasons. That, while closing many lay institutions in order to make use of the human reserves of the nation, he tried to close down religious institutions too; that, considering the limitation on the number of copies and number of pages of lay publications, he wished Church publications to be limited also, does not come under the provisions of Article 6 of the Charter. It is true that in this respect he followed, among other things, his anticlerical attitude. But when, aside from this, the same measures were taken in Germany against other institutions and other publications—measures which were supposed to be only temporary war measures—one cannot speak of actual religious persecution. That Bormann might have been coresponsible for the persecution of priests has not even been submitted or proved at all. All documents indicate that Bormann always adhered to the legal stipulations in effect; and since he desired to comply in every way with Hitler's orders, it is to be assumed that he observed Hitler's decree at the beginning of the war which directed that all measures against the Church be discontinued.

Therefore it may be said in conclusion that this matter, too, cannot be really cleared up despite the numerous documents presented. Documents alone do not suffice to dissipate all doubts on the case. Especially with respect to the importance and weight of Bormann's share in measures aimed at persecution of the Church, it seems necessary to determine Bormann's personal responsibility. This fact therefore also remains somewhat obscure. A basis for a just determination of the punishment to be inflicted cannot be established.

I shall not take up the time of the High Tribunal by bringing up further details. I think that the indications I have just given are sufficient to show that even the documents presented by the Prosecution prove, in any case, only one thing with certainty—namely, that Bormann in his capacity as chief of the Party Chancellery held "as ordered by the law" an intermediary position in official and secretarial communication between the head of the Reich and the subordinate agencies and among those subordinate agencies themselves. Anything else is only an assumption which has not been definitely proved—in any case not with the certainty necessary to render a just verdict *in absentia* and without hearing the defendant and to determine the severity of the punishment. Unfortunately, a legend has already been woven around Bormann's personality, his

activity, and his survival. But for the sober judgment of jurists legends are not a valid basis for a verdict free from any doubt.

In view of the innovation created by the Charter—completely novel in the history of law of all times and all nations—in passing a final, irreversible sentence upon an absent defendant, I beg the High Tribunal to make use of their right to adopt such a procedure only after having considered the hitherto existing legal concepts and, especially when examining the case, to consider the prerequisites set down in a precise manner by Russian law. I therefore expressly propose that the Tribunal decide either to suspend the proceedings against the Defendant Bormann because of his proved death, or to postpone his trial until he is personally heard and can personally state his case and that the Tribunal make no use of its right according to Article 12.

THE PRESIDENT: I call on Dr. Kubuschok on behalf of the Defendant Von Papen.

DR. EGON KUBUSCHOK (Counsel for Defendant Von Papen): Before beginning my final plea I should like to submit to the Tribunal a few completed interrogatories which have since been received and of which some have also been translated. Since I refer to them in my final plea, I should like to submit them now.

THE PRESIDENT: Yes, Dr. Kubuschok.

DR. KUBUSCHOK: First of all I submit the completed interrogatory which has been received from the witness Tschirschky as Document Number Papen-103. I now submit a copy in English and in French.

On this occasion may I draw the attention of the Tribunal to the fact that Tschirschky was the secretary of the Defendant Von Papen who, at the time when he was in Vienna, was called to Berlin by the Gestapo and then emigrated to Great Britain, where he has presumably obtained British citizenship by now. The correspondence with reference to this Tschirschky case was the subject of the cross-examination. With reference to the numerous questions dealing with Papen's vice-chancellorship and his activities in Vienna, the witness has expressed himself in great detail and in all cases answered in the affirmative.

Presumably the Tribunal do not want me to discuss these questions in detail now. The copies submitted to the Tribunal will be sufficient. But perhaps I could quote the last paragraph from Question 1:

> "Regarding his relation to the NSDAP, I can say that during the time when I was working with Von Papen, Von Papen's attitude was a negative and, in fact, a hostile one in every respect."

It appears important to me to refer to the answer to Question 2, which deals with the safety measures during the formation of the Government on 30 January . . .

THE PRESIDENT: Dr. Kubuschok, the Tribunal does not wish you to comment twice on the interrogatory. If you want to comment upon it to the Court in your speech, well and good. You comment now as you put it in, and then presumably you may make some observation later on in your speech.

DR. KUBUSCHOK: Mr. President, during the plea I will refer only very briefly to the special questions answered in this interrogatory. On the whole I do not refer to them in my plea. In my plea I merely give a summary of the answers, but I do not deal with the questions themselves again.

THE PRESIDENT: Dr. Kubuschok, the Tribunal thinks the appropriate course for you to take is to put in these interrogatories now, and when you deal with them in your speech, you can refer to any particular passage that you want.

DR. KUBUSCHOK: Yes. In its present written form the reference is very brief and does not even consist of a sentence. Besides . . .

THE PRESIDENT: When you get to it . . .

DR. KUBUSCHOK: Shall I read it then?

THE PRESIDENT: Yes.

DR. KUBUSCHOK: Very well. I have submitted the completed interrogatory of Tschirschky as Document Number Papen-103 and then the completed interrogatory of Archbishop Gröber as Document Number Papen-104. Gröber has to do with the conclusion of the Concordat. I am also submitting the interrogatory of Archbishop Roncalli as Document Number Papen-105, and finally, the interrogatory from the Polish Ambassador Jan Gavronski, which is Document Number Papen-106. These are documents which I received already translated. In addition I would like to ask the Tribunal to allow me another document, which in spite of all my efforts I have not yet been able to have translated. It is an affidavit from a foreign correspondent, Rademacher von Unna. He had transmitted in a letter to my colleague Dr. Dix, on 29 May 1946, an affidavit for Papen which arrived here about 3 weeks ago. Of chief interest in this affidavit is one paragraph. I should be most grateful to the Tribunal if I could read the paragraph so that the Tribunal would be in a position to see if this affidavit is relevant, and if so, to permit me to submit this document. Then I would submit the original, and the translation could be supplied as soon as completed.

THE PRESIDENT: You have not shown it to the Prosecution yet, have you?

DR. KUBUSCHOK: I had submitted the German text at the time, but now it has been in the Translation Division for 2 weeks, and I have not been able to get it yet. I have already mentioned the document during the last session when we discussed evidence, and the Tribunal informed me that I should submit it on another occasion; when the matter came up for discussion.

THE PRESIDENT: Is it long?

DR. KUBUSCHOK: It is not long. The document is a page and a half, and I will read a paragraph which is shorter than half a page. Only that paragraph is of real importance to me.

THE PRESIDENT: Does the Prosecution object to this?

MAJOR JONES: My Lord, I have not seen a copy of this document, but we have no objection in principle; I have not seen the document myself, and it is a little difficult to give any opinion as to whether we would object, if we had the opportunity of examining it.

THE PRESIDENT: Dr. Kubuschok, perhaps the best would be for you to read the document and the Prosecution can move to strike it out of the record if they object to it.

MAJOR JONES: Yes, My Lord. That would be quite a convenient course for the Prosecution, My Lord.

DR. KUBUSCHOK: I shall read from that affidavit from Rademacher von Unna, dated 29 May 1946, which was executed in Milan, half of the penultimate paragraph. The executor of the affidavit in this communication is referring to a statement made by Von Papen which is worded as follows:

> "He, Papen, would, however, not allow himself to be deterred by anybody from carrying out his mission in the way he himself understood it: to be an intermediary and peacemaker; and therefore he would show anyone the door who might wish to misuse him in Austria for obscure purposes.
>
> "In this connection it is worth mentioning that a member of the Austrian Government, a state secretary whose name I have forgotten, was making efforts to establish personal, but secret, contact with the German Ambassador in order to offer him his services for the German cause. Herr Von Papen turned down this offer, giving as his reason the fact that he refused to participate in conspiracies which were directed against the official policies of the Ballhausplatz. Up to now he had attempted to co-operate openly and loyally with the Federal Government; and he, on his part, would not use any other means."

As an explanation I should like to add that the member of the Austrian Government who is mentioned here is Neustädter-Stürmer.

Your Lordship, may it please the Tribunal, Papen is accused of taking part in a conspiracy to commit a crime against peace. With respect to time the Prosecution limit the discussions of the facts of the case to the termination of his activity in Vienna. They admit that as far as the subsequent period is concerned, especially during his activity as Ambassador in Ankara, no indications were found to support the accusation. In other words, according to this viewpoint Papen is said to have taken part in the preparatory actions for unleashing a war of aggression—which actions the Prosecution have placed very far back chronologically—but he is not said to have actively participated in the immediate preparations and in the crime against peace itself.

The Prosecution deal with Papen's activity as Reich Chancellor in the last pre-Nazi Cabinet, with the part he played as Vice Chancellor in Hitler's Cabinet until 30 June 1934, and with his activity as Minister in Vienna. They were faced with the task of proving that during this period preparatory actions for a crime against peace actually took place, and that Papen, in full recognition of these aims, collaborated in the preparations. Since the counts of the Indictment deal with a field of activity which is in itself a legal one, and since the criminal element cannot be introduced into the individual acts except in the direction of their aims, judgment of the Papen case lies essentially in the subjective sphere. The Prosecution are faced with the fact that Papen's own views, which often came to light, and the policy which he actually pursued cannot be made to agree with the interpretation given by them. Therefore, they seize upon the premise that he is a double-faced opportunist who has sacrificed his real sentiments, or those displayed, to the existing conditions of the day and to Hitler's will.

In consequence, it must be the task of the defense to elucidate his personality in order to prove that Papen's actions and statements follow a uniform, consistent line and that his entire attitude *de facto* was such as to preclude connecting him with the offenses of the Charter and that those of his actions which are under discussion must have been undertaken in pursuit of other aims than those which the Prosecution think they can recognize. Furthermore, the defense will outline Papen's entire political activity with regard to its legality; and within the framework of this activity it will deal with the actions considered punishable by the Prosecution and will finally submit counterevidence showing that he actively worked against a political development as represented by the facts brought forward in this Indictment.

We shall arrive here at a just evaluation only if the question of political expediency and correctness is left out of discussion and if we accept the politician as he reveals himself to us with the

opinions and attitudes derived from heritage and tradition. Moreover, an essential element in judging fairly will be the necessity of eliminating what we have learned during the Trial concerning later years and this later period. We shall have to direct our consideration only to the time of the actions themselves, and only then shall we obtain a clear picture of what Papen could see and expect at that time.

The Prosecution gives the date of Papen's initial participation in the conspiracy as 1 June 1932, the date of his appointment as Reich Chancellor. However, it does not answer the question as to what circumstances are to indicate to us Papen's entry into the clique of conspirators alleged to have been already in existence. Indeed, it is impossible to give an answer to this. Papen's activity as Reich Chancellor cannot be regarded in any way as activity having to do with a Hitler conspiracy. The idea behind the formation of the Cabinet, the entire leadership of the Government during his chancellorship, and finally his departure from office are too clear to allow us to read into them a promotion of National Socialist ideas, a paving of the way for National Socialism, or even participation in a conspiracy allegedly already in existence. The Papen Cabinet was formed at the time of an unusual economic, political, and parliamentary depression. Unusual means had already become necessary under the preceding Cabinet. They were to be continued now, in part on entirely new lines. In times of unusual crises a parliamentary legislative body probably always offers certain difficulties. Therefore, even in the days of Brüning's Cabinet, the Reichstag was practically completely excluded from legislation which the Emergency Powers Law gave to the Reich President. It was now thought necessary to work along completely new lines. A cabinet of men who were experts in their own field but who were not bound to any party was to do away with these difficulties. Therefore the new Cabinet was intentionally created without the collaboration of parties. The task with which the new Government was faced and the program necessarily resulting from the conditions of the time brought with them, of necessity, an attitude hostile to National Socialism. To strike at the roots of the depression, government policy would have had to attack the causes for the growth of the National Socialist movement. These consisted of discontent with economic conditions and the political situation abroad.

But on the other hand one could think of doing peaceful reconstructive work of any lasting benefit only if some *modus vivendi* could be found with the National Socialist Party. The Party had not only constitutional power practically to paralyze every government activity; but with nothing more than influence on the masses by its propaganda it promised amelioration of domestic political conditions, the first prerequisite for far-reaching economic measures.

Papen was faced with this situation in the last days of May 1932, when to his complete surprise he was commissioned by Hindenburg to form a presidential cabinet.

With regard to his governmental activity, I wish to limit myself in my defense against the Indictment to the following details: The formation of the Cabinet of 1 June 1932 took place contrary to previous parliamentary custom without any previous consultation with the National Socialist Party. Epoch-making new economic laws subsidized by unprecedented financial appropriations were decreed in order to combat unemployment and at the same time to stifle at its source the seemingly invincible growth of the National Socialist Party. The aim of the new economic measures and the limited financial possibilities demanded application of these measures over a long period of time. The labor market was to be stimulated by the use of funds to consist of the future savings in public taxes if the measures were successful. The economic laws were based only on this exploitation of financial possibilities. No use was made of unproductive public work projects intentionally, nor was the labor market artificially stimulated by armament orders. These long-range economic measures, which could be successful only during an uninterrupted government policy, made their acceptance by the Reichstag appear especially urgent.

In the field of foreign politics Papen continued the course which the Brüning Cabinet had pursued; and in so doing he placed particular emphasis on these points of honor, the recognition of which would have brought no damage to the other parties of the treaty but which would have taken from the National Socialist Party a powerful propaganda weapon to influence the masses.

At the conference of Lausanne Papen openly explained the domestic political situation in Germany. He pointed out that ideological points mainly were involved, the nonrealization of which would give the National Socialists the impetus they desired. He explicitly emphasized that his efforts were the last attempt of a nonradical Cabinet and that in the event his policy failed only National Socialism would profit from it.

Papen strove to make the National Socialist Party take a share of the responsibility without wishing to entrust to it the key position of Reich Chancellor—a share in the responsibility which would have forced this party of negative politics to recognize actual conditions and which would thus have eliminated its attractive demagogic propaganda.

These first attempts by Papen to bring about the participation of the National Socialist movement in the work of government are regarded by the Prosecution as paving the way for National Socialism. However, this is actually nothing but an attempt to

find a basis of some kind for practical governmental work, an attempt which had to take into account the experience of the Brüning Cabinet and the development of the National Socialist Party.

The fact could not be disregarded that already the Reich presidential election in March 1932 had brought Hitler 36.8 percent of all the votes. If one takes into consideration that Hindenburg was the opposing candidate and that Hindenburg's personality certainly caused many followers of the NSDAP to vote in this special case not in accordance with Party directives, the fact follows that a heretofore hardly known opposition party had arisen which outnumbered by far all the other parties and the antagonism of which was able to paralyze *a priori* any governmental activity. Hence followed, what was a foregone conclusion for Papen, the endeavor to get this party out of its status as an opposition party. This decision would be all the easier if the firm conviction were there that a share in the responsibility of government would turn the opposition party from its radical course and above all curb it considerably in its further development.

The best evaluation of Papen's governmental activity, seen from the standpoint of the National Socialists, comes from the fact that it was the National Socialist Party which opposed Papen's decisive economic legislation and with its vote of no confidence—pronounced jointly with the Communist Party—brought about the end of the Papen Cabinet. The subsequent negotiations of the still acting Reich Chancellor, especially the events of 1 and 2 December 1932, show again his unequivocal attitude toward the NSDAP.

Papen proposed a violation of the Constitution to Hindenburg. He wished to exhaust this last means in order to avoid a Hitler chancellorship. Schleicher opposed this solution on the grounds that in the event of a civil war, which might then break out, the Government would not remain master of the situation with the police and military forces at its disposal. In the light of these clear historical events, the attempt of the Prosecution to give a different interpretation to the facts and to these clearly recognizable unequivocal motives is of little avail.

What then are the points which the Prosecution believe that they can marshal in the face of this?

For one thing, Papen in his first negotiation with Hitler, and a short time after forming his Government, consented to rescind the order prohibiting the wearing of uniforms, a measure which, even if it had merely been taken as a political deal to have the Cabinet accepted, is quite natural according to parliamentary rules. Not only was the NSDAP the strongest party in the Reichstag, but due in particular to its general political influence in public life it constituted an instrument of power of the first order. Therefore, it

could not *a priori* be driven into a state of opposition if it was intended at all to pursue a realistic policy of long duration and seriously to try to overcome the emergency through a revolutionary economic program.

The repeal of the prohibition of uniforms was based also on more basic reasons, since it was a one-sided prohibition against a single party; the opposing organizations were not limited in this respect and the acknowledgment of the law of parity here could only eliminate dangerous propaganda material. The repeal of the prohibition of uniforms was furthermore by no means the announcement of a license for political acts of violence. It was reasonably to be expected that the warning of the Reich President, announced with the proclamation of the decree, that acts of violence resulting from the decree would bring about an immediate prohibition of the organizations as such, would prevent just such pernicious results.

The claim of the Prosecution that the repeal of the prohibition concerning uniforms was the main cause of the increase in the number of National Socialist seats at the July election is completely at variance with the facts. I refer to the already-mentioned result of the Reich presidential election of March 1932, at which the real situation did not even become completely manifest because of the fact that Hindenburg was the opposing candidate. The election of 21 July 1932 brought 13,700,000 National Socialist votes, whereas in the Reich presidential election of 10 March 1932 Hitler had already received 13,400,000 votes. There are no grounds whatsoever for assuming that the appearance of uniforms, which, incidentally, had been replaced earlier by camouflage standardized clothing even during the period of prohibition, might have had any determining influence on the outcome of the elections.

Much more important and in a negative sense more decisive for the outcome of the elections was certainly the general prohibition of political parades and demonstrations proclaimed by the Papen Cabinet at the beginning of the election campaign. Public meetings and political parades are the most important expedient for a demagogically led party. To lose this possibility just before the election was undoubtedly a much greater loss for the NSDAP than the previous advantages it had received in the form of permission to wear uniforms.

In the letter of 13 November 1932 in which Papen again tries to induce Hitler to participate in the Government, the Prosecution see an effort, undignified in its form and blameworthy in its essence, to smooth the path of National Socialism to power. They forget that Papen conducted the November elections in sharp opposition to the NSDAP, because he tried to remove the Party from the key position in which it could not, without Hitler, numerically form a majority

with the parties from the Social Democrats to the parties of the extreme right. They forget that this result had not been achieved, that the key position even with 196 seats remained with Hitler and that, therefore, it was necessary to make another attempt to win Hitler over for a presidential cabinet under some conservative chancellor. They overlook in this respect that Papen's proposals here again had the definite aim of excluding the NSDAP from the Reich chancellorship. For National Socialism a cabinet under a conservative politician, who would have had to determine the principles of the policy in line with the Constitution, would only have permitted the Party's influence to be felt in this or that department; but in return for this influence it would have been obliged to share the responsibility through its participation in the government. Seen in retrospect from the standpoint of the opposition to National Socialism one could indeed have welcomed nothing more enthusiastically than just such a participation by the Party in the government, limited in influence and sharing the responsibility. The end of an opposition policy which was so tremendously favorable for propaganda purposes would undoubtedly have stopped the growth of the National Socialist movement and the conversion of its radical elements.

To write the letter in a polite form was the official duty of the Reich Chancellor toward the leader of the strongest party in the Reichstag. It is a foregone conclusion that, in using this form and because of the purpose of the letter, the writer does not refer to negative points only but also to those positive elements which could lead to co-operation in the Government.

In order to be able to find the least indication during the period of Papen's Reich chancellorship of his sympathy with the ideas of National Socialism, the Prosecution have seen in the temporary elimination of the Prussian Government by the decree of 20 July 1932 intentions which in no way could pass the test of an objective examination.

The so-called *coup d'état* of 20 July, as the Prosecution term the execution of the decree of 20 July 1932, had not the slightest thing to do with promoting the National Socialists. In the opinion of the Reich Cabinet and according to the decisive judgment of Reich President Von Hindenburg, domestic political needs required that the open toleration of Communist acts of terror by the Prussian Cabinet in office be brought to an end. Hindenburg drew the logical conclusion and issued the Emergency Decree of 20 July 1932. By a decision of the then still independent Reich Supreme Court, it was determined that this decree with regard to constitutional law was permissible within the framework of state political necessities.

If in carrying out this decree the request was indeed actually conveyed by police authorities to the Minister of the Interior, who

had been suspended, that he leave his offices, the word *coup d'état* lends a meaning to this measure which goes far beyond what actually happened. Also in considering the effects of this measure any assumption that here the way was paved for National Socialism is not justified by any facts. The appointed Reich Commissioner Bracht belonged to the Center Party. The key position of police president in Berlin was entrusted to a man on whom the hitherto existing Braun Cabinet had previously conferred the office of police president in Essen. Briefly, the result of the change was only that, on the one hand, an effective co-operation was now assured with the Reich authorities and, on the other hand, new people filled some political positions which up to now had been the almost exclusive monopoly of the Social Democrat Party to an extent which, from the point of view of parity, could no longer be justified. That in filling these positions the National Socialists were passed over was a charge which was made against Papen time and again by the National Socialists.

Consequently, Papen's entire term of office in the Government constitutes a clear line of realistic politics which show that, on the one hand, he did not relinquish the pilot wheel in carrying out necessary measures, especially economic ones, while, on the other hand, he tried to get a numerically large opposition party to collaborate. Papen's attitude toward the NSDAP became even more manifest after he had been asked by the Reich President, late in November 1932, to collaborate in the efforts to form a new cabinet.

In this he showed he had the courage to go to the extreme. Realizing that it was impossible to go on with a non-National-Socialist Government, according to parliamentary principles, he submitted to the Reich President the proposal to rule with the aid of armed force, even if he thus caused a violation of the Constitution and risked causing a civil war.

It is just as difficult to reconcile oneself with such a proposal, when one adheres to thinking along lines of constitutional law, as it is impossible to overlook in retrospect that the proposed temporary violation of the Constitution was probably the only way to avoid the solution which then became necessary on 30 January 1933.

Any other temporary solution could not have had a satisfactory result. Sooner or later the opposition party would have forced the resignation of any non-National-Socialist cabinet. With that political unrest with its consequences on the entire economic life would have become a latent state—a state of affairs, which, through its repercussions, would only strengthen the National Socialist movement to such an extent that in the end the result would have been the fulfillment of its entire totalitarian claim for assuming unlimited power.

The part played by Papen in the formation of the Cabinet of 30 January 1933 might in itself be disregarded. It is sufficient to be aware of the fact that all endeavors to bring about a parliamentary government without Hitler could not succeed from a purely numerical standpoint, and that such a parliamentary solution with Hitler was wrecked by his opposition. A measure born out of political and constitutional necessity cannot, according to the Indictment, be considered as evidence of intentional planning of a crime in the sense of the Charter. The purpose of this count of the Indictment must be considered. By maintaining all parliamentary rules Hindenburg, in his capacity as chief of State, appoints a Government the head of which is the leader of the strongest party. This Government, when presented before the Reichstag, finds an overwhelming majority. That which Papen is accused of, the knowledge of the activities of the National Socialist Party in the past, holds true to the same extent also for the other participants, for Hindenburg and all consenting members of the Reichstag. The reproach leveled against Papen thus includes also an accusation against Hindenburg and the entire consenting Reichstag. For this reason alone probably the first attempt to include in an Indictment a self-evident, constitutional procedure of a sovereign state must fail.

If despite this fact I go into the events which occurred before the formation of the Government, it is only in order to show clearly the unequivocal standpoint of Papen, who on the one hand did not wish to close his eyes to the real facts, but on the other hand desired to undertake everything in order to prevent the danger of an uncontrollable development of this reorganization. The Prosecution consider the Hitler-Papen meeting at the home of Schröder on 4 January as being the beginning of the efforts to form the Government of 30 January 1933. As a matter of fact the meeting at Schröder's was nothing else than an exchange of ideas on the existing situation during which Papen and Hitler maintained their previous opinions and Papen pointed out that Hindenburg, owing to the apprehensions which he had expressed, would in no case agree to Hitler's taking over the position of Reich Chancellor. Hitler would have to accept the position of Vice Chancellor, since Hindenburg took the standpoint that further development would take place after he had stood the test of time.

This meeting in Cologne took place upon Hitler's request. I refer in this instance to Schröder's communiqué published by the press, which I submitted as Defense Document Number Papen-9, and which I erroneously indicated during the cross-examination as being a joint communiqué issued by Papen and Schröder. Schröder established in it that he alone took the first step toward having this meeting.

That this meeting was in no way the basis for the formation of the Government of 30 January is obvious from the fact that the discussion was immediately reported by Papen to Schleicher and Hindenburg and that subsequently until 22 January Papen had nothing to do with the solution of the problem of a new government. Schleicher as well as Hindenburg endeavored to obtain parliamentary support for the Schleicher Cabinet through negotiations with the leaders of the parties, efforts which failed, however, due to the pressure of the political facts. The main effort was to split up the National Socialist Party by inviting the collaboration of the Strasser wing in the Government. These efforts failed when Hitler's position became so strong after the result of the elections in Lippe that he regained absolute control over the Party against all attempts to split it up. The outcome of the elections in Lippe of 15 January 1933 was generally considered as a barometer of public opinion with respect to the political situation. All parties had mobilized their entire organization and propaganda machinery, and therefore one could gauge public opinion from the result of this election. The result showed that the losses suffered during the November elections were almost completely regained. Thus everybody could recognize that the decline of the National Socialist movement was stopped and that with the continuance of the momentary political and economic situation a further gain was to be feared.

The necessity for a decision became more and more urgent when, on 20 January 1933, the Ältestenrat (Council of Seniors) of the Reichstag—by convening the Reichstag for 31 January—granted to Schleicher's Cabinet a period of grace up to that date, since a vote of no confidence by the left and the NSDAP meant its immediate fall. The meeting in the house of Ribbentrop on 22 January, when Hindenburg wanted to learn through his son and the State Secretary of the Presidential Chancellery, Dr. Meissner, Hitler's opinions about the political situation, has to be considered from this point of view.

The part Meissner played and also his general part in the formation of the Hitler Government cannot be established with certainty by means of the data at hand. In any case, as a member of the immediate circle around Hindenburg who finally took the ultimate decision, he was by no means uninterested in the matter. He has been judged at least very differently. Because of his own interest in the case he can in no event be considered as a classical witness for the judgment of the events of that time. His testimony seems certainly in one point highly improbable. He maintains that he opposed Hindenburg's decision, after the latter decided to appoint Hitler to the office of Reich Chancellor. This is said by the same man who during the session of the Cabinet concerning the Enabling Act did not consider it necessary to maintain the right of the Reich

President to proclaim laws, the same man who after the events of 30 June 1934 obviously collaborated in isolating Hindenburg from all those who could give him a true presentation of the events. I make these remarks because a part of a Meissner Affidavit was read during the hearing of evidence against Papen. Although according to the decision of the Tribunal the part which was read will not constitute a basis for the verdict, during the cross-examination questions were nevertheless asked in reference to the affidavit which might raise doubts. The decision of the Tribunal relieves me of the obligation further to discuss in detail the contents of the affidavit and to indicate a number of inaccuracies which could be easily refuted.

The hearing of evidence has shown that until 28 January 1933, Papen made no attempts whatsoever as regards the formation of a government. On that day, in view of the imminent meeting of the Reichstag, Schleicher had to bring about a decision. On 1 December 1932 he advised Hindenburg against an open fight with the Reichstag and declared that the use of armed force in a possible civil war would be hopeless. Now he thought that he himself could find no other solution than to beg to be permitted the use of those forces which he previously considered as being insufficient. But since no change in the situation had occurred since that time which could offer reasons for Schleicher's change of opinion, since moreover the position of the NSDAP was strengthened by the elections in Lippe and the general political situation had become still more tense through the attitude of the parties, Hindenburg upheld his decision of 2 December. Thus the resignation of the whole Schleicher Cabinet was inevitable. Now the events took the course which necessarily and logically they had to take if the use of arms was to be avoided. There was only one solution now: negotiations with Hitler. Hindenburg commissioned Papen to conduct the negotiations for the formation of the government. On Hitler's part it was clear that he could maintain his unwavering demands—namely, to take over the office of Reich Chancellor himself. The task, clearly recognized by Papen, was now to set limits to the political activities of the new party which had not yet been tested on such a large scale.

First of all, a change of course had to be avoided in those ministries in which any radicalism would have been particularly detrimental—namely, the Foreign Office and the War Ministry. Hindenburg reserved for himself the right to fill these two key positions. In order not to entrust the new chancellor with appointing the remaining ministers, as had been customary heretofore, Papen was charged with this task as *homo regius*. He succeeded in limiting the number of National Socialist ministers to a minimum. Three National Socialist members of the Government faced eight non-National-Socialists, who for the main part were taken over

from the former Cabinet and who guaranteed a conservative policy in their ministries. That was not all; within the framework of the Constitution the authority of the Reich Chancellor was to be limited in a manner hitherto unknown. Papen was appointed to the position of Vice Chancellor. His function was not connected with a special department but mainly intended to constitute a counterpoise to the position of the Reich Chancellor. It was decided that Hitler in his capacity of Reich Chancellor should report to Reich President Von Hindenburg only in the presence of the Vice Chancellor. Thus, a certain control was established when the Reich President formed his opinion on the requests presented by the Reich Chancellor. In view of Hindenburg's personality, which one might reasonably expect to have exerted quite considerable influence upon Hitler, this control over the information Hindenburg received promised that a shift toward a radical course would be avoided. This was the part the defendant had in the formation of the Hitler Government. The Prosecution see herein a decisive, conscious, step toward the transfer of full power to National Socialism.

By considering the case objectively, even in retrospect, one can only arrive at the conclusion that in view of the inevitable necessity of ceding the leadership of the Cabinet to the National Socialist Party, every possibility for limiting the importance of this measure was exhausted. The position of Reich Chancellor and the appointment of only two National Socialist ministers represented the concession made to Hitler's demands.

For the consideration of the present proceedings it would not matter if the solution adopted on 30 January was the only possible one or not. Even if one were of a different opinion, the only thing that matters in looking at the case from a criminal angle is whether Papen could consider this solution as a necessity or in general only as a mere political expediency. Even if, contrary to all the facts, one regarded his opinion as utopian, it should be taken into consideration from the point of view of penal law that one could only speak of guilt if he had known the future consequences and the future plans of aggression and if in spite of this he had collaborated in the formation of the Government. The facts just mentioned have proved that there is not even the slightest supposition for this.

In considering the case, it is of decisive importance also that the two ministries, which in connection with the accusation of breaking the peace are the most important or which are the only ones to play a part at all—namely, the Foreign Office and the War Ministry—were placed in the hands of men who enjoyed Hindenburg's confidence and had had no connection at all with Hitler, and from whom an unbiased direction of the ministries could be

expected. It is not unimportant to consider in this instance what expectations one might have from Hitler and his future policy.

The leader of the opposition party now took for the first time the responsibility of a party, the structure and development of which could certainly occasion many misgivings and apprehensions, a party which had developed on the basis of an absolutely negative attitude toward the hitherto existing government leadership, a party which, noisy and boisterous as it was, had certainly made many concessions with regard to the composition of its membership, a party which had laid down a new program including points which seemed far from reality and impossible to carry out but which—and this is the only essential fact within the scope of our consideration of the case—apparently did not have any criminal character.

On the other hand one cannot disregard the experience of life and history that propaganda and responsible work are two very different things, that a party which develops from nothing needs, according to experience, more negative and noisy propaganda than an old existing party. Even if the Cabinet of 30 January had consisted exclusively of National Socialists, even if there had been no moderating element in the person of Hindenburg, one could have assumed according to the rules of reason and experience that Hitler, who acceded to power by means of propaganda, would take into account the existing conditions in this practical, responsible work and would show himself in his activities essentially different from what he appeared during the propagandistic preparation before his accession to power.

One instance had already shown the difference between a party in opposition and in responsible government work: The same National Socialists with their same program and their same propaganda who now on 30 January took over the position of Reich Chancellor had already held the leadership or participated in the governments of some German states. We see Frick, the leader of the Reichstag faction, acting as responsible minister in Thuringia. His field of action included even the police and we saw the National Socialists zealously tackling various economic problems in these states. But we did not see them commit excesses or even pursue an unreasonable policy, which would have been at least in approximate agreement with their propaganda. Could it not be expected then that now in the Reich too, with the greater tasks, the natural sense of responsibility would increase? And that, especially in view of the safety measures taken, matters would not take a dangerous course?

It is not superfluous to discuss Hitler's personality in this connection. Hitler, especially after the failure of the attempt to split

the Strasser group, was the absolute autocrat of his party. Undoubtedly he did not show in the leadership of his party, in his speeches, and in his appearance that reserve which should have been a matter of course for the leader of such a big party.

However, all signs indicated that Hitler had his party under control to such an extent that he would be able to put through even unpopular measures which had to be taken under the pressure of reality. In the questions concerning the participation in the government he had pursued a policy in keeping with his intentions, wise in its tactics but often unpopular with the impatient masses, because he took the facts into account. Could it not be expected then that this man who now had reached his aim—namely, to take over the leadership of the Cabinet—would abandon the unrealistic ideas he advocated when he was in the ranks of the opposition and would submit to the real exigencies of national and international life?

It is also a general fact known from experience that a man confronted with particularly great aims and with a particularly grave responsibility grows as a ruler and as a man in proportion with these aims and this responsibility. In view of this general historic experience one could not assume that a man entrusted with responsibility, after certain attempts which could be interpreted as being promising, would soon revert to the theses of his former opposition ideas, that after a couple of years this man would throw overboard every positive idea he had emphasized—I remember for instance Hitler's professing his adherence to the Christian foundations of the state—and that he would even surpass the negative ideas he formerly advocated and increase to an immeasurable extent his aims and his methods. We see now Hitler in his full development before us; and we are perhaps tempted to interpret his actions during the last years—because they represent something which is so monstrous and therefore so impressive—as being the manifestations of his whole personality, assuming that during the preceding time he had already been such.

It is not possible, within the scope of this Trial, on the basis of events, his speeches, and especially his actions, to interpret and to understand Hitler psychologically from the beginning of his political activity until its end. His well-known fear of disclosing himself and the mistrust he showed more and more toward nearly everybody in his immediate surroundings makes it particularly difficult to judge his personality. The individual facts which occurred lead, however, to the certain conclusion that Papen, too, despite the fact that he was close to Hitler, could not suspect him in 1933 of being the man he showed himself during later years.

Papen as *homo regius* was fully aware of his responsibility in agreement with Hindenburg's wishes and did what he could to

prevent radicalism from getting the upper hand. After the formation of the Çabinet he did not sit back and take the easy way favorable for him from an opportunist point of view. He undertook to form a counterpart to the National Socialists at the elections of 5 March 1933 through a union of the conservative parties of the right. For one who had adopted the National Socialist ideas or even agreed to offer blind obedience to their leader, the next thing to do would have been to put an end to the opposition of this large newly constituted conservative group and to let it effect a union with the party which had recently come to power, a way which at that time appeared to many absolutely natural. Papen entered the election contest as leader and organizer of the oppositional group "Black-White-Red." His speeches of that time, excerpts of which I submitted in the document book, give a clear picture of his aims and intentions. They were the affirmation of a national idea, free from the unrestrained propaganda of National Socialism and its doctrines. In any case his program was in irreconcilable contrast to what later turned out to be the unpredictable extension and unlimited transgression of the confirmed aims of the NSDAP. The formation of the political action bloc Black-White-Red was to guarantee what Papen had tried to achieve by the composition of the Cabinet of 30 January: a coalition cabinet which, as an inevitable result of parliamentary rules and the entire political situation, left the post of Reich Chancellor to the leader of the strongest party, who, however, was forced to rule within the framework of a coalition cabinet with all the limitations which derived from it.

THE PRESIDENT: Would this be a convenient time to recess?

[A recess was taken.]

DR. KUBUSCHOK: I believe that I have made it sufficiently clear by these statements that Papen's collaboration in the formation of the Cabinet of 30 January does not constitute an attempt to place National Socialism in a position of exclusive power. The opposite has been proven by facts. With regard to the Defense, I have gone far beyond what would be necessary to obtain a verdict of not guilty. If, even at this stage, somebody had co-operated in really giving the National Socialist Party an exclusive influence, there still would not be proof in this of a preparatory action for the punishable crimes in the sense of the Indictment.

The program laid down by the National Socialist Party and the statements of the Party leaders of that time—which in view of their propaganda value must be construed much more narrowly from an objective angle—can be misinterpreted as much as one likes, and one may read into them in retrospect any number of facts which

became recognizable later; but one cannot see in all this the road to the crimes set out in the Charter.

In Papen's activities as Vice Chancellor during the period from 30 January 1933 to 30 June 1934, the Prosecution think they can see a continuation of his efforts toward a conspiracy for the purpose of consolidating the powerful position to which he had helped to bring National Socialism. The Prosecution have charged him in this connection with collaboration in the various laws passed during this period by the Government, which, according to their opinion, merely served the afore-mentioned aims. I will demonstrate, however, how the work of the defendant developed in detail—that also in this respect he did not deviate from his original policy. The Prosecution deal with a number of laws passed by the Cabinet at the beginning of its activity which must be considered as a compromise between the demands of the National Socialists and the conservative ideas of the other members of the Cabinet. Problems are here touched upon which National Socialism made the subject of discussion and propaganda for years. The conservative members of the Cabinet were then facing the following situation: The strongest party and the Reich Chancellor could not entirely ignore these questions; they had to be solved in some form.

The principle of every coalition cabinet entails a compromise for both parties. In compromising, the other party need not change its opinions. If, for example, in a coalition cabinet which is led by a labor party the program of the labor government, which perhaps contemplates a general socialization, is to be carried out in practice, the collaboration of the other members of the cabinet will consist in preventing a general extension of this measure and in limiting its effect to those cases which, in their opinion, deviate least from the course followed before. One cannot expect from the strongest party and from its leader, who occupies the constitutional position of Reich Chancellor, to continue the policy of his predecessors. The other members of the coalition must make sacrifices if any governmental activity is ever to be possible.

Since in the framework of this Trial we do not have to judge considerations of political expediency and not even moral conceptions but only whether what happened was done with a criminal purpose in the sense of the Charter, the task set for the Defense is comparatively simple.

In the legislation we see the ideological problems raised by National Socialism partly solved. We must concede that the non-National-Socialist cabinet members involved in considering these laws had in mind a final solution and not a temporary one. Their experience, based on the past, on the political life of all countries, taught them that a problem settled by law is normally concluded.

It was unthinkable—for it was incompatible with a normal governmental activity and the maintenance of the authority of a legislative body—that after the issuance of a law, a problem already dealt with should continually be considered anew in the following years and each time given a more radical solution. Papen has proved that he carefully tried to keep the concessions made to the opponent within a more or less tolerable limit. The fact that in the laws of that time National Socialist doctrines appear only rarely and in moderate terms shows sufficiently that the composition of the Cabinet of that time had a retarding influence on the penetration of National Socialist ideas. Without this influence it would not be understandable why Hitler agreed to a relatively unpopular limitation of previously advocated aims of the Party.

The restraining hand of the defendant which helped shape the individual laws is clearly discernible. The classic example for this is his endeavors in bringing about the Enabling Act. It was a necessary piece of legislation for that critical time. The preceding years had shown that, owing to time-consuming deliberations in the Reichstag, urgently needed legislation was not passed. Therefore, already in Brüning's time, almost all the legislative power was put in the hands of the Reich President in that important laws were issued in the form of emergency decrees by unilateral legislative acts of the Reich President. For these compelling reasons, the legislative power which could not in practice be left in the hands of the Reichstag, was transferred to the Cabinet and this constituted a compromise. As shown by the result of the Reichstag vote on the Enabling Act, none of the parties, including the Center Party, failed to recognize this.

Then there was the question as to whether the rights of the Cabinet, in which according to the Constitution the Reich Chancellor had to establish the fundamental lines of policy, would be limited by the fact that the right of making laws was reserved for the Reich President. The personal State Secretary of the Reich President declared in a cabinet session that he did not think it necessary that Hindenburg be given the responsibility of making all laws because of the latter's right to proclaim them. Von Papen's direct intervention with Hindenburg immediately afterward remained without success, as stated by the witness Tschirschky.

Mr. President, would this be an appropriate time for me to present the essential points of the questionnaire which was answered by Tschirschky?

THE PRESIDENT: Well, you can comment on it, but you aren't going to read the whole document, are you?

DR. KUBUSCHOK: With your approval, I will give a summary of it.

THE PRESIDENT: Yes.

DR. KUBUSCHOK: This is Document Number Papen-103, which I submitted a while ago.

I have already read Question 1. Question 3 concerns the controls just discussed. The witness says that they were surely intended to prevent Hitler and the NSDAP from carrying out their policy. In the next question the witness affirms the alleged aim of the conservative bloc Black-White-Red. In Question 5 the witness confirms the development, which I still have to present, toward an authoritative government by Hitler. The answer to Question 7 shows that Papen in the Cabinet strongly resisted the suggested legislation in many points. Question 10 concerns the attitude of Papen toward the Church. The last sentence is particularly important:

> "Von Papen believed that, by concluding the Concordat, Hitler and the NSDAP would be placed under such strong contractual obligations that the anti-Church attitude would be arrested."

The next answer, 11:

> "I do not consider it possible that Von Papen himself participated in a later violation of the Concordat or that he even used his religious conviction for political trickery."

Question 12 confirms what I shall say about the Marburg speech.

The answer to Question 14 is significant:

> "It is not known to me that Von Papen expressed opinions to the effect that the Hitler Government would have to solve Germany's foreign political aims through war and aggression. In the years 1933 and 1934 such ideas would have been absurd."

The answer to Question 15 is to the same effect. The answer to Question 18 confirms Papen's efforts after the events of 30 June to reach Hindenburg in order to effect a change.

THE PRESIDENT: In the answer to Question 14, does the answer begin "It is not known" or "It is known"?

DR. KUBUSCHOK: "It is not known to me."

THE PRESIDENT: In the translation it says "It is known."

DR. KUBUSCHOK: The answer to Question 16 confirms Papen's statement that he wanted to prevent Germany's withdrawal from the League of Nations at all costs. I have already spoken of Question 18. From the answer to 18 it is also shown that Papen's firm attitude after 30 June was his insistence on resigning.

Questions 19 to 23; here the second sentence of the answer is especially important:

> "... It is correct that Von Papen accepted the post of Ambassador Extraordinary to Vienna for the sole reason that he

hoped to prevent the insane policy of Hitler and the NSDAP in Austria. It is correct that Von Papen made his acceptance of the mission at Vienna depend on Hitler's pledge to forbid any Party interference in Austrian matters, to call back Gauleiter Habicht at once, and to refrain from any aggressive action. It is true that these and still other stipulations were accepted by Hitler after lengthy protest and that they were then put down in writing."

In the answer to 25, Tschirschky confirms the fact that during the witness' period of observation Papen steadfastly adhered to this policy. The answer to Question 26 refutes the contents of Messersmith's affidavit. Papen was not concerned with an aggressive policy in the southeastern area. The answer to Question 27 sums up the attitude of the witness to the effect that Papen did not strive for an Anschluss to be obtained by force.

Continuing on Page 22 we see Papen again in the foreground when the problem of anti-Semitism had its first legal effect. At that time, the situation was the following:

There were the broad masses who for years had been influenced in this direction, and there was a predominantly National Socialist group for whom anti-Semitism was an important plank in the Party platform. We saw the effects of propaganda on the masses which manifested themselves in the afore-mentioned individual actions during the first weeks after the formation of the Hitler Government.

The conclusions to be drawn from this situation were clear. A problem which had been stirred up and which had already shown pernicious results had to be legally settled. It was clear that in this question National Socialism, through its exaggerated propaganda, had contracted a certain obligation toward its followers. It was difficult to determine the extent of the legal limitation, which for the incited people always had to be disappointing. The way out could only be a compromise. The settlement was directed to a field where a change in the hitherto existing situation seemed to be the least severe.

Whereas in accordance with the contents of the Civil Service Law (Berufsbeamtengesetz) only those were dismissed from their position who occupied their position not on account of their professional qualification but due to their membership in a political party; all Jewish government employees who were appointed after 1918 were also dismissed. As a rule, a right of pension was maintained. Papen's successful endeavor aimed to limit numerically the effect on the Jewish government employees concerned. He remonstrated with Hindenburg, who favored the idea of protecting war veterans. Through Hindenburg's personal influence on Hitler, Jewish

war veterans and dependents of fallen soldiers were then exempted from this law.

Since an overwhelming part of the young government employees who had been employed since 1914 were war veterans, the number of those thus exempted was quite considerable. This is made especially clear by the official figures published concerning the conditions in the legal profession, which were presented in Defense Document Number Papen-33. Furthermore, the defendant is charged with the measures taken against the labor unions. First consideration must be given to the fact that the measures were not carried out by a regulation based on a Reich law. It is, moreover, important that under the changed circumstances the continuation of labor unions of a Social Democrat character might have appeared as an anachronism. Papen's attitude with respect to the problem of labor unions is shown by his speech of 4 March 1933, Defense Document Number Papen-10.

Here, too, it must be considered that at the time the measures were taken one could not have foreseen the extent of their further development. Considering its many rather sound ideas for the settlement of social questions, the German Labor Front at the time of its foundation did not merit the judgment it now deserves for the countless coercive measures taken at the end.

The amnesty decree, as was shown during the hearing of evidence, is no novelty. Already in 1922, in order to put an end to a period of political unrest, an amnesty decree was issued, which also pardoned crimes punishable by the death sentence. The establishment of special courts was a measure of expediency to speed up the sentencing of political offenders, because longer normal proceedings did not have the desired element of intimidation. It is significant that the order concerning crimes of violence in the case of the Potempa murderers (Document Number Papen-1, Pages 6 and 7) was applied for the first time during Papen's Reich chancellorship, against National Socialists. Thus it is erroneous to see in the nature of those laws approbation of misdeeds or a promotion of the Nazi idea.

The Prosecution, in criticizing Papen's legislative activity during this time, emphasize the Political Co-ordination Act for the States of 31 March 1933, thus touching first of all a question of domestic policy, which is really far outside of a field of discussion in the sense of the Indictment.

If in this the Prosecution have the sole purpose of showing that Papen has in this respect changed the point of view he advocated previously, it must be said that political opinions are in general subject to alterations and often must be altered, and that from a change of conception with respect to political expediency measures one can by no means draw a conclusion as to a general change of

opinion. As a matter of fact, the first Statthalter Act was designed to eliminate a dualism between the Reich and the states, which Papen had always considered as disadvantageous. Papen has always advocated, especially with respect to Prussia, a solution as in Bismarck's time, when the office of President of the Prussian Council of Ministers and that of Reich Chancellor were united in one person. Thus, this question, which ought to be touched only in passing, hardly involves even a change of opinion, much less a proof of a change of sentiment.

The following must be considered with respect to the legislative work of the Defendant Von Papen in the Cabinet: His position of Vice Chancellor was without an administrative province. The influence, even in general political questions, which the head of the regular ministry had in cabinet sessions, did therefore not exist in the case of Papen. He could only express misgivings or objections from a general point of view, without being able to base them on departmental grounds.

Considering the small number of cabinet session protocols available—despite all my efforts I did not succeed in procuring the remaining ones—the extent of Papen's opposition and that of other ministers cannot be proved by documents. The fact that he voiced this opposition was revealed by the hearing of evidence. But, as admitted, his success was small. Thus it is the duty of the defense to investigate more deeply the reasons why Hitler's power gradually increased and why the influence of the non-National-Socialist ministers decreased; in short, why the guarantees which had been provided when the Government was formed on 30 January failed.

At the beginning the course of the cabinet sessions did not deviate from the normal procedure. The questions which arose were made the subject of discussions. Hitler refrained from carrying through the bills which were rejected for good reasons. A clear description to that effect is given by the affidavit of the former Minister Hugenberg—Defense Document Number Papen-88.

The elections of 5 March, with the overwhelming success of the National Socialist Party, brought along a substantial change. Beyond their purely parliamentary repercussions, they strengthened Hitler in his conviction that he was the deputy of the German people. He thought that now the time had come for him to make use of his right, granted to him by Article 56 of the Constitution of the Reich, to determine in his capacity as Reich Chancellor the fundamental lines of policy, even when the ministers opposed such a course.

With respect to the constitutional situation I refer to Document Number Papen-22, which shows that in questions of fundamental policy even a majority decision of the ministers was ineffectual against the decision of the Reich Chancellor. Now Hitler became

inaccessible to any suggestions. Hitler took opposition to mean resistance and soon it became evident that objections made in the Cabinet were useless in changing Hitler's attitude. At the best one could hope, as the Defendant Von Neurath declared as a witness, to influence Hitler outside the Cabinet in a direct discussion.

The most essential factors in Hitler's development into an autocrat were his increasingly strengthened position with regard to Hindenburg and his ever-increasing influence on the Reich Defense Minister, Von Blomberg.

Hitler's first measures which, in Hindenburg's eyes, indicated a desire to restore order, had constantly improved Hitler's personal relations with Hindenburg. He skillfully adjusted himself to Hindenburg's mentality. Therefore he succeeded very soon in abolishing the original stipulation concerning the obligation of making joint reports. Thus, Papen was practically deprived of the chief means of influencing Hindenburg. The attitude of the War Minister, Von Blomberg, was the second decisive point in Hitler's further course.

The Wehrmacht was a powerful factor. Hitler knew that its men and officers were probably essentially unpolitical but that by no means—especially as far as its leadership was concerned—were they inclined to National Socialist ideas. A radical turn in the government might therefore always give rise to resistance on the part of the Armed Forces. It must be added that owing to his personality, Hindenburg listened willingly to reports coming from military circles. As long as the War Minister was not a disciple of Hitler, the latter was prevented from carrying out any radical ideas.

It is not possible even today to gain a historically clear picture which would enable one to explain the reason for Hitler's influence on Blomberg. We must only state the fact that Blomberg very soon became an ardent admirer of Hitler and that on his part no sort of resistance could be expected against any extensive radical development whatsoever of Hitler's policy. The 30th of June 1943 was to prove this very clearly.

In retrospect, the logical consequence of this development becomes clear. Hitler could only be impressed by actual power. The Wehrmacht at the beginning, especially with regard to the position of the Reich President Von Hindenburg, was a powerful factor with which even Hitler and his Party would not have been able to cope in a showdown. That is the reason for Hitler's endeavor to win Hindenburg's confidence, the reason for his comparatively cautious maneuvering during the time prior to Hindenburg's death, which by no means could envisage the intensified procedure later on. From the time of Hindenburg's death, Hitler appeared as a ruthless dictator especially in the domestic scene.

In addition to the legislative activity of the Cabinet, the Prosecution dealt with the question as to what extent Papen was responsible for the oppression of political opponents and for certain acts of violence which occurred during the period which the terminology of that time called "national revolution."

During the cross-examination Papen was asked whether he knew about the arrest and mistreatment of individual Communist and Social Democrat personages named to him. Papen gave a generally negative answer. However, he knew that on the basis of the Decree for the Protection of People and State issued by the Reich President measures had been taken which suppressed the personal liberty of a great number of leftists. The decree was issued by the Reich President, outside Papen's responsibility, and by suppression of the relevant constitutional stipulations. It was established under the impression created by the Reichstag fire, an event which up to the present day has not been fully elucidated, but for which the official statement that Communist circles had been the instigators seemed to be entirely credible, especially since a search of the Liebknecht House, the Communist headquarters, had produced, according to Göring's declaration, very serious evidence concerning actions planned against the Reich Cabinet. The investigation proceedings were held by a judge of the Reichsgericht (Reich Supreme Court), a personality whose impartiality was beyond any doubt. Therefore Papen could understand the legal security measures which the Ministry of the Interior thought necessary. But knowledge of the arrest of these politicians is by no means connected *eo ipso* with the knowledge of the details and of the extent of the measures taken at that time.

During the years of the National Socialist regime he learned again and again that the knowledge of acts of violence remained restricted to the narrow circle of the direct participants. The measures taken to silence an internee before his release were evidently successful. Thus we see again and again that there was always only a small initiated circle from the immediate environment of returned internees. This explains the fact which sometimes amazes one afterward, namely, that wide circles were not informed of the kind and extent of the excesses committed. It is evident that close relatives and close friends of the politicians arrested at that time knew of what had happened to their people. The extent of the secrecy is shown best by the fact that the witness Gisevius assumes that the conditions in concentration camps did not become generally known to Gestapo officials until 1935.

Thus it seems to me quite clear that Papen knew very little about the measures which, during the first months, were almost exclusively taken against political opponents of National Socialism

coming from leftist circles. At any rate his knowledge did not go beyond the fact that in this respect arrests were made within the scope of the Decree for the Protection of People and State.

It was a different matter, however, with the later encroachment on the rights of Church offices and organizations, which were closer to him and which he energetically tried to help. The same holds true for the measures in connection with 30 June 1934, which will be discussed later on.

In any case it is a decisive fact that the measures, as far as they were outside the law, were subject to the jurisdiction of the Police and the Ministry of the Interior. The law itself is an emergency decree of Hindenburg's. It came about legally. The now broadened conception of protective custody does not in itself constitute a crime.

With regard to anti-Jewish excesses the Prosecution accused Papen of having sent a telegram to the *New York Times* on 25 March 1933, describing the situation in Germany as quiet on the whole, and of having pointed out that individual actions had occurred but were now prohibited by an order from Hitler.

From the sources which were accessible to him, Papen had of course heard of the excesses of which individual SA men had become guilty in this unsettled period. If on 12 March 1933 Hitler categorically forbade such actions by individuals and ordered the strictest punishment for any culprits in the future, Papen could assume with a clear conscience that this order which emanated from the highest authority would henceforth be obeyed.

In passing it is interesting in this connection to refer to a public announcement of the League of Jewish Front Soldiers of 25 March 1933. This proclamation also stated the fact that the situation with respect to the Jewish population was in general quiet and that excesses were confined to actions by individuals, which had now been forbidden by Hitler. I shall submit this publication of the League in my document book for the Reich Government. The same standpoint was taken in a publication of the American Chamber of Commerce in Cologne on 25 March 1933, which publication I shall also present during the hearing of evidence for the Reich Government.

The anti-Jewish boycott, which was announced some days later and which was carried out on 1 April 1933, was, contrary to the opinion of the Prosecution, no government measure but exclusively a Party measure which Papen, too, as well as others in the Cabinet, sharply opposed. The publication of the *Times* submitted with Defense Document Number Neurath-9 proves that over and beyond this Papen made representations to Hindenburg and had the latter intervene with Hitler. For the rest, one must take into consideration the fact that the anti-Jewish boycott had been announced as

a defensive countermeasure which was to be limited in time and to be extended only to business life. It had been expressly forbidden to use force and excesses were to be prevented by corresponding measures.

The Prosecution have presented the domestic policy in such a light that it would seem that through the measures taken the position of the National Socialist Party was to be strengthened, so that it should then be possible to turn to the aims dictated by a foreign policy of force which had been decided upon beforehand. Still more important than the discussion of domestic conditions is, therefore, an examination of the foreign policy of the Reich during the time Papen was Vice Chancellor.

Hindenburg's reservation that he would appoint the Foreign Minister and the appointment of Von Neurath, who had been Foreign Minister until then and was not a National Socialist, to this post necessarily led one to expect a foreign policy along the course hitherto taken.

Hitler's first measures seemed not only to justify this expectation but even to go beyond it. The first speech on matters of foreign policy, made on 17 May 1933, dealt with Germany's relations with Poland which in the past had never been entirely satisfactory. The subject of the annexation by Poland, recently revived, of large territories formerly belonging to the German Reich had brought with it a latent tension between these states. Hitler was the first to take up this problem and to resolve, according to his declaration in the Reichstag, to bring about a policy of friendship with Poland by recognizing the Polish State and its needs. If one considers the fact that the thought of renouncing all claims to a revision in regard to Poland was not only generally unpopular but also stood in sharp opposition to previous propaganda, it was impossible to foresee the development of later years. One was necessarily convinced that here was an internally strong government supporting its domestic reconstruction with a policy of peace abroad.

Germany's joining the Four Power Pact and her renewed profession of adherence to Locarno served to underline this conviction. The struggle in foreign politics for ideological values lay in a different direction. The question of eliminating the clause in the Versailles Treaty which stipulates Germany's exclusive guilt and the question of equal rights for this large country, which had pursued a persistent policy of peace since 1918, were demands which, on one hand, did not seem to burden the other side with unbearable sacrifices but which were suited to remove from the German people an ideological burden which was considered oppressive.

Germany's withdrawal from the Disarmament Conference must be considered from these viewpoints. It took place after lengthy

negotiations had produced no positive results and because it was in no way evident that the powers were inclined to bring about a fulfillment of the German demands. The declaration of the Reich Government and of Hindenburg that this step was to be looked upon as a tactical step and that the same objectives were to be retained, namely, the preservation of peace under recognition of equal rights—all this therefore had to appear credible and reasonable.

From the same points of view Papen also approved of this step. With regard to the simultaneous withdrawal from the League of Nations opinions could have differed. Here, too, one might hold the view that the withdrawal was necessary as a movement of protest and that one could prove through factual efforts in the matter itself that it was intended to adhere to a policy of peace.

Papen figured among those who felt obliged to advise against withdrawal from the League of Nations, even though he himself had experienced as Reich Chancellor that the negotiations in the assembly of the League of Nations caused certain difficulties in some questions. On the other hand, however, he was so convinced of the institution of the League of Nations being an instrument of understanding and an instrument to facilitate the technical possibilities for agreement that he wished to avoid withdrawal from the League of Nations. He advocated this opinion very strongly. Since he could not persuade Hitler in Berlin, he followed him to Munich shortly before the decision in order to lay his well-founded opinion before him there. We see Papen here working actively in a field for which in his position as Vice Chancellor he actually had no responsibility, aiming at a solution which, if one takes as a basis the views of the Prosecution concerning the withdrawal from the League of Nations, can only be considered as a step toward peace.

Because of the fundamental importance of the withdrawal from the League of Nations the measure was submitted to the German people in the form of a plebiscite enabling it to state its opinion. On the occasion of this plebiscite, Hitler, the Government, and Hindenburg issued proclamations which emphasized expressly that this step was not intended to constitute a change of policy but merely a change of method. Preparations for the plebiscite were carried out in line with this statement.

The Prosecution accuse Papen of having glorified in his Essen speech the successes of Hitler's Government and of having unconditionally advocated an affirmative attitude toward the questions to be decided by the plebiscite. If Papen did the latter, it was because he felt obliged to do so, the decision having been cast once and for all—a decision which had to be justified before the world. If the responsible leaders actually did not strive for anything but a change of methods, no objections could be made. The position of

German foreign policy would have been shaken if the people had shown in the plebiscite that they opposed the measure already taken. It was therefore quite natural to approve of this policy in public within the framework of the solemn assurances which had been given. Moreover, it could not be overlooked that in a plebiscite on government measures the vote of confidence could not fail to affect internal politics altogether.

We have to take the date of the speech into consideration. In November 1933 Hitler had made progress in urgent matters which were in the foreground—namely, the amelioration of economic distress and the elimination of unemployment. His measures were taken on a large scale and at first showed apparent success. Here, too, one cannot measure things by the same standard that one applies to them today in full knowledge of their development. At that time the course taken seemed justified by its success. In his electoral speech which demanded demonstration of confidence for the Government for the purpose of acknowledging a matter of foreign policy, Papen felt obliged to refer appreciatively to this positive development in domestic politics.

In his introductory speech Mr. Justice Jackson himself acknowledged in the following words the conditions of 1933 which have been described:

> "After the reverses of the last war we saw the German people in 1933 regain their position in commerce, industry, and art. We observed its progress without distrust and without malice."

Of all problems of foreign policy it was perhaps the question of German-French relations which interested Papen most. In his own testimony he has stated his views on this subject and has related how, as early as in the twenties, he collaborated in various political and Catholic bodies with the idea of promoting mutual understanding between France and Germany. I refer in this connection to Document Number Papen-92 and to the meeting between Papen and the French Colonel Picot described therein, which is characteristic of Papen's attitude.

In the new Government, Papen, as Commissioner for the Saar territory, paid special attention to this question. We see how he tried to avoid in the Saar question as well everything that could in any way impair, even temporarily, the relations between the countries. Therefore he suggested that there should be no recourse to a plebiscite which might give renewed impetus to political chauvinism in both countries. Hitler, himself, not only before he took over power but as responsible chief of the Cabinet, had stated time and again that Germany had no intention of bringing up the question of Alsace-Lorraine, but that the Saar question was the only problem still to be settled between the two countries. And in so

doing he followed entirely the suggestions of Papen, which aimed at a peaceful settlement.

Papen is also accused of having deceived the contracting party, namely, the Vatican, by concluding the Concordat in July 1933. By concluding the Concordat Papen allegedly intended to strengthen Hitler's position and to enhance his reputation abroad.

The hearing of evidence has shown that the Concordat in its effects, too, was a bilateral pact, and that the legal obligations of the Concordat during the treaty violations on the part of Germany which followed soon afterward, also offered certain legal protection for the violated party. The questionnaire of Archbishop Gröber concerns the conclusion of the Concordat. I refer to Document Number Papen-104 which I submitted today, and I summarize it as follows:

Archbishop Gröber is of the conviction that the Concordat was concluded because of the initiative of Papen. Furthermore, he confirms that Papen succeeded in persuading Hitler to the conditions of the Concordat. In the answer to Question 4, in particular, he confirms that Papen's activities while the Concordat was concluded were dictated by his positive position toward religion. Finally he confirms, in the answer to Question 6, that the Concordat was a legal "bulwark" and a support in face of the later persecution of the Church. Answer 7 confirms in fact that the Work Association of Catholic Germans, which I shall mention later, was not an organization protected by the Concordat.

In any case, it is entirely wrong to suppose that Papen had any knowledge of intended future violations of the treaty and that for that reason he had brought about its conclusion. If he had wished to enhance Hitler's reputation abroad, this means would have been the least suitable that could be imagined. A struggle against the Church without the Concordat would have met, it is true, with an unfavorable reception abroad, but it would nevertheless have been an internal German affair. The existence of the interstate treaty made these Church persecutions at the same time a violation of an international treaty and lowered our prestige. One cannot conclude a treaty for the purpose of gaining prestige if immediately after its conclusion one proceeds to violate the same treaty. This consideration alone refutes the assumption of the Prosecution. Beyond this the accusation of the Prosecution shows a characteristic tendency.

Every action of Papen's which has in any way come to light must be interpreted, they feel, in the sense of the conspiracy theory to Papen's disadvantage; and the simplest procedure for doing so is to place the later development into the foreground, claiming Papen's co-operation in and knowledge of this development and to denote his previous contrary statements of opinion as ambiguous and

double-faced. This procedure is simple, if one considers the knowledge of later developments in retrospect as self-evident and if one does not picture the true factual situation at the time—above all, if one makes no effort to go into the logic in the proclaimed original intention and the further developments. Only in this manner can one, as in this instance, come to a conclusion which on closer consideration presupposes the folly of the person acting at the time.

But quite apart from these deliberations, the attitude of the defendant toward religious matters removes the slightest doubt of the sincerity of his intentions. In the hearing of the evidence it was set forth that not only his closest personal advisers in Church affairs but also the highest dignitaries of the Church, who were in closest personal as well as professional contact with the defendant in these matters, emphasized that his attitude as a Catholic was absolutely beyond reproach at all times.

The lack of foundation of the whole Indictment with regard to Church questions is already made clear by the refutation of the assertion of the Prosecution that Papen himself broke the Concordat by dissolving the Work Association of Catholic Germans. I refer in this respect to the unequivocal testimony of the former secretary of the Work Association of Catholic Germans, Count Roderich Thun, Defense Document Number Papen-47. It must be stated, however, that Papen not only regretted the subsequent violations of the Concordat by the Reich but that he actively tried to oppose them. The entire activities of the Work Association of Catholic Germans consisted practically of nothing else but the establishment of such violations of the Concordat in order to furnish Papen with evidence for his constant interventions with Hitler. After Papen's departure for Vienna, the practical possibility of such interventions ceased to exist.

From all of Papen's speeches it is evident that his attempt at safeguarding the churches did not emanate from considerations of political expediency of the day but from his fundamental religious attitude. I believe there is no speech in which he did not express himself on this problem, emphasizing time and again that only the Christian philosophy of life and thus the Christian churches, could be the foundation for the orderly government of a state. In just this Christian foundation he saw the best protection against the tendency of the Party to give preference to an ever-increasing extent to the idea of sheer might over right.

With regard to Papen's report to Hitler of 10 July 1938, Document Number 2248-PS, which was submitted during the cross-examination, the Prosecution fell victim to a quite obvious misunderstanding. Papen refers in it to the favorable result there would be in the field of foreign politics if one could succeed in eliminating

political Catholicism without touching the Christian foundation of the state. Papen does not state here his opinion on the past and present situation but furnishes advice for the future. The content of this advice is definitely positive in the ecclesiastical sense. It states that one may eliminate political Catholicism; but the purely ecclesiastical interests themselves, that is, the Christian foundation of the state, must remain untouched. These directives destined for future times obviously contain criticism of the past as well. We see here how, in connection with foreign political activities, matters could be discussed and brought up to Hitler which in themselves belong to another field.

In his own testimony Papen replied to the accusation of the Prosecution that as a good Catholic he should have resigned after the Pope had issued his Encyclical Letter "With Grave Apprehension" of 14 March 1937. Papen could refer, in this connection, without any criticism and with full approval, to the standpoint of the Church itself, which has always been of the opinion that one should hold a position so long as it still offers the slightest opportunity for positive work. Owing to this wise attitude and to its feeling of responsibility for the German Catholics, the Church up until the end never completely broke with the Third Reich. One cannot ask an individual Catholic to take any other standpoint in this respect. This all the less as Papen, in his purely foreign political activities, came into no conflict whatsoever with his Catholic conscience.

The accusation that in the fall of 1938 he should have protested to Hitler about the treatment of Cardinal Innitzer is also without foundation. Papen himself can no longer remember today when and in what form he heard of these occurrences at all. The German press did not publish anything about it, and in no case did such matters reach the public via internal Church channels, as the Prosecution assume. In any case at that time Papen had no possibility whatsoever to intervene, being merely a private person and besides in very bad standing with Hitler at the moment.

I have already dealt with Hitler's development into an autocrat. After the cessation of joint reports to Hindenburg, Papen's influence was reduced to a minimum. Protests in Cabinet sessions coming from a single man, who was unable to base these protests on requirements of his own department, were of purely declaratory nature. Meanwhile the Nazi doctrines were being applied more and more in practice. It became clear that the willingness of the early days to compromise in agreeing to a rule by a coalition was slowly abandoned and that the National Socialist doctrine kept gaining ground in all fields. It was clear to Papen that he would not follow that course. It was likewise clear that within the framework of his

official position he could not alter the general trend, apart from his efforts to help in many individual cases. On the other hand his position of Vice Chancellor, which still existed in theory, gave him certain weight in public life. Thus he had to face the problem as to whether he should launch out on a policy of public criticism of all the prevailing abuses as a last attempt to influence the development by public discussion of the problems. In case of failure, he would have at least publicly branded these abuses even if, as a natural consequence, Papen would have to give up his position and would thus no longer be able to aid many people in individual cases.

In his Marburg speech of 17 June 1934 Papen distinctly branded all abuses which had become apparent until then. Such extensive public criticism remained unique in the history of the Third Reich.

He realized that the danger of Nazism lay in the fact that its different doctrines were so interlocked that they formed an iron ring of oppression on all of public life. Had only one link of that ring been smashed, the dangerous character of the entire system would have been averted. If only one of the points discussed had met with practical success in a favorable sense, it would have meant a total change of conditions. The system objected to could not have existed another day if the freedom of speech demanded by Papen had been granted. It could not have been upheld if the conception of justice and of equality before the law were recognized. It could not have existed if freedom of religion were guaranteed. A Marxist mass theory cannot be upheld if the maxim of the individual's equality, common to all confessions, is advocated.

Each of Papen's attacks in his Marburg speech—he had dealt with the racial issue already in his Gleiwitz speech—was in itself an attack upon the development of the entire Nazi doctrine. Here a leading member of the opposition in the Government clearly indicated the source of the abuses.

The consequences of such an action were foreseen by Papen from the very beginning. Either Hitler would take into consideration the new state of affairs after it had become a matter of public discussion, or Papen was going to offer his resignation, since he could no longer reconcile further co-operation with the path chosen by Hitler.

Evidently Hitler at that time did not consider it necessary to make a concession to public opinion by deviating from his line of action. He tried to kill the opposition by forbidding the publication of the speech and by penalizing its distributors. Papen resigned. Hitler did not accept this resignation immediately, since he obviously had to take Hindenburg into consideration, wishing to clear up the situation first of all with him. Meanwhile the events of 30 June

took place. What fate had originally been destined for Papen in the course of those events will probably never be known definitely. Particularly, it will never be elucidated whether different people were moved by different intentions.

The course of the actions becomes most apparent by the manner in which they were carried out against the office of the Vice Chancellor. Bose was the first victim, in the very building of the Vice Chancellery. Jung, who was arrested outside of Berlin, was also shot. His fate, however, became known to Papen and the public only much later, as it had been hoped at the beginning that he had left Berlin and had gone to Switzerland, having been warned by the measures taken as a result of the Marburg speech. The other members of the staff who could be apprehended were taken into custody by the police and later sent to concentration camps. As to Papen himself one hesitated to make a final clear decision as to his fate. His close relationship to Hindenburg made it seem advisable not to add to the list of victims of 30 June so prominent a name, especially after it had been burdened enough, as far as Hindenburg is concerned, with the crime camouflaged as self-defense against Schleicher.

At any rate, within the framework of the Indictment it suffices to establish that whatever Papen's fate has been in the end, the measures taken against him and his people demonstrate his absolute opposition against Hitler and the Nazi policy.

During the cross-examination the Prosecution presented letters to Papen which outwardly seem to show at first a certain divergence from his usual attitude. In those letters Papen assures Hitler of his attachment and loyalty and hides his real and material desires under polite phrases which otherwise were in no way customary in his relations with Hitler. It may appear surprising that a man who opposed the system, who had been persecuted for that reason, and upon whose associates such incredible things had been inflicted, chose to write such letters. But for a fair judgment a correct understanding of the state of affairs at that time is required. A state of lawlessness existed at that time. It offered a favorable opportunity to ged rid of troublesome opponents: The examples of Schleicher, of Klausner and others have sufficiently shown that. There was no way of knowing beforehand when and in what manner the measures taken against the persons already involved in these matters would end. The heated imagination saw in every man with opposing ideas a conspirator with these SA groups who sooner or later had really intended to revolt against Hitler.

How far indeed persons of the right, because of their opposing attitude, had joined hands with the SA, which was a powerful factor at that time, has not been established with certainty up to

now. However, it could not be judged at that time whether or not Hitler's statements in regard to persons not belonging to the SA were correct.

For Papen the situation at that time was as follows: He knew of Bose's assassination but was as yet unaware of Jung's fate. He hoped that the latter had escaped. Three of his co-workers were in a concentration camp. These had first to be released. And also in view of the future the suspicion had to be dispelled that any one of them, as well as Papen himself, had been in contact with the SA circles in revolt. If Papen ever wished to make any representations with Hitler, the first requirements for any possible success would be to show that he was far removed from such SA circles. Papen therefore felt obliged to assure Hitler of his loyalty and faith. Besides, Papen had been convinced for years that Himmler and Goebbels were behind the attack on him and the Vice Chancellery and that Himmler in particular wanted to eliminate him, having been prevented from doing so only by Göring and that therefore in order to protect himself against these two it was necessary to assure Hitler of his irreproachable attitude.

In judging these letters it is not their form but their contents which is essential. The whole gist of the letters is the demand of rehabilitation for his own person and his associates. He demands court action. He advises Hitler to strike out from his intended Justification Law all actions directed against persons outside the SA circle.

But what is the meaning of these demands of Papen? Their real significance is his adherence to legality with regard to the illegal actions of 30 June. He demands an objective and judicial clarification of all that is to be condemned in the events of 30 June. When we consider these events of 30 June, we must always bear in mind that they fall into two parts. The first were measures against the SA leaders, whose radicalism had always been known and who were always connected with acts of violence and independent activities which in the past had had to be condemned. Intervention against such people could be explained as an act of state defense against dangerous forces which were ever ready for revolt. The other part consisted of measures against individuals outside the SA circle. A court investigation would have resulted in the clearing up of these events and in condemning the persons responsible.

I believe that an objective study of the events at that time leads one to the conviction that Papen's letters really had no other purpose than to achieve what he had proposed to Hitler, namely, rehabilitation by means of a court action of those persons who had been unjustly persecuted and the insistence on a decree to establish the illegality of the measures in question. If we come now to the

heart of the matter and to what was actually desired we can by no means give to the form of these letters the meaning which is ascribed to them by the Prosecution. That this form in particular did not represent an approval of the measures of 30 June but was merely used for the above-mentioned purpose is best shown by the examination of the letter of 17 July. Though at that time Papen had succeeded in having his co-workers released from the concentration camp, his other demands were not fulfilled by Hitler. So we now see a piece of writing which is entirely lacking even in the most elementary forms of politeness, merely objective statements and objective requests, a piece of writing signed only with the name of Papen, without even a closing courtesy formula.

With regard to the subject Papen does not retreat from his line of conduct for a single moment. He insists upon his resignation and demands immediate action on it, as the letter of 10 July 1934 shows; he refuses to play any part in future government activities. He leaves Hitler immediately after having had him called out of the Cabinet session on 3 July. He keeps aloof from the Reichstag session at which the Justification Law is passed. He rudely declines the offer to accept the comfortable post of Ambassador at the Vatican. Such was his negative attitude.

As to the positive one, he strives to bring about the intervention of the Armed Forces. He turns to his friend Generaloberst Von Fritsch. Blomberg, because of his attitude, is out of the question. Fritsch will not act without an express order from the Reich President. So now Papen endeavors to get in touch with Hindenburg. But Hindenburg's entourage keeps him off.

THE PRESIDENT: You might stop there.

[The Tribunal adjourned until 23 July 1946 at 1000 hours.]

ONE HUNDRED AND EIGHTY-FOURTH DAY

Tuesday, 23 July 1946

Morning Session

DR. KUBUSCHOK: Yesterday I stopped at the point where I was describing what Papen did in the course of the measures of 30 June. I mentioned his resignation, his refusal to co-operate in any way. I shall continue at the bottom of Page 46, the last paragraph.

On the positive side he strives to have the Armed Forces intervene. He applies to his friend General Von Fritsch. Blomberg, because of his attitude, is out of the question. Fritsch will not act except on the express orders of the Reich President. Papen then endeavors to contact Hindenburg. But Hindenburg's entourage keeps him off. All access to his estate, Neudeck, is blocked by SS guards. Papen sends his secretary Ketteler to Hindenburg's neighbor and old friend Herr Von Oldenburg in order to obtain access to Hindenburg by this means, but that attempt also fails. He is left to witness how far Hindenburg has obviously been influenced when he publicly approves of Hitler's conduct in an official telegram on 30 June.

What steps were left for Papen to take with the prospect of even moderate success? In his negotiations with Hitler he had tried to put matters on a legal basis. His attempts to mobilize the only factor of power, the Armed Forces, had failed. Hindenburg was unapproachable; his advisers had evidently influenced him in the opposite direction.

The Prosecution hold that this was the time for Papen to refer openly to the criminal events of June 1930: by so doing he could have brought about the collapse of the entire Nazi system. That assertion is untenable. Apart from the fact that, as we have demonstrated, Papen could no longer make an official statement of this nature, subsequent developments in Germany have made it plain that no individual protest of the kind would have had any effect on Hitler's power either at home or abroad. Hitler's prestige in Germany was already so great—and it increased as time went on—that such a protest, assuming that it reached the public at all, would certainly have found no echo in the masses of the population. The great masses saw only the economic improvement and the strengthening of Germany's position abroad, and only a comparatively

small number of them realized the true danger of this development. Foreign countries were, for the most part, better informed of the events of 30 June than were the Germans themselves. A statement by Papen would not have made matters clearer to the German people. No conclusions were drawn from the available knowledge by foreign countries either at that time or later.

The Prosecution even believe that such a step might have led to the reoccupation of the Rhineland by the French. I cannot imagine on what the Prosecution base this assertion. It is contradicted by the fact that later events, not connected with internal politics, but vitally affecting other countries—for instance, the introduction of compulsory military service and the occupation of the Rhineland—called forth no military reaction.

By his resignation and his open refusal to attend cabinet and Reichstag sessions, Papen made it clear to the public that he was opposed to the state of affairs. His conduct was a public protest against the measures of 30 June and their perpetrator. The Prosecution cannot deny these outward signs, which are historical facts. They attempt, however, to construct an antithesis between his outward behavior and his inner convictions. The only evidence at their disposal for that purpose are the letters addressed by Papen to Hitler in July. Even if the real nature and purpose of these letters were not clearly discernible from their contents, as in fact is the case, such an attempt would fail in any case in face of the facts just stated—since the means at hand were, from their very nature, inadequate.

In this connection, I would like, in general, to make the following observations: What reason could Papen have for assuming in public a hostile attitude toward Hitler during his vice-chancellorship, and during the events of 30 June, if he had been, in fact, his loyal follower? What reason could Hitler who, according to the Prosecution, conspired with Papen, have had for desiring this, and this, after all, would only be a result of the conspiracy? Could Hitler have wished Papen to disclose in his Marburg speech all the weaknesses and abuses of the Nazi system? What reason could Hitler have had for wishing Papen to remain so obviously aloof from the lawless proceedings of 30 June? It could only have been in line with his policy to show the unity between Vice Chancellor and Reich Chancellor to the public. If these points are taken into consideration, there is only one possible conclusion: There is no logical basis for the Prosecution's interpretation of Papen's inner conviction.

This thesis of unconditional obedience to Hitler, despite certain facts apparently indicating the contrary—but actually for purposes of camouflage—is again applied by the Prosecution to Papen's acceptance of the Vienna post. Before discussing this problem, let

me briefly state the following. In my opinion the final development in the Austrian question—which occurred after Papen's recall, and undoubtedly without his co-operation—namely the marching-in on 12 March 1938—does not represent a crime in the sense of the Charter either. The Charter considers as punishable the preparation and waging of a war of aggression, or a war by violation of international treaties. In the three counts of the Indictment, the Charter confines itself to the arraignment of what appears to be crime at its gravest, with terrible and all-embracing consequences. The forbidden war of aggression itself, the crimes against the laws regulating the conduct of warfare, the crimes against humanity in their most brutal form, the immeasurable consequences of these grave actions—all these things have justified this unusual trial. The Charter does not charge the Tribunal with the punishment of all the injustices which have occurred in the course of the development of National Socialism. In particular it does not charge the Tribunal with the task of investigating every political measure in order to determine whether it was necessary or permissible. Such a task is no part of the functions of this Tribunal, if only for technical reasons and for lack of the necessary time. It is not the task of the Tribunal to examine whether or not international treaties were observed. This question is only of importance if wars were caused, or if the crimes of violence which are to be described in detail have to be accounted for. The march into Austria is not a war, however far one stretches the meaning of the term, from the standpoint of international law. Here the sole decisive factor is that no force was employed, and not the slightest resistance offered; but that, on the contrary, the troops were received with jubilation. Furthermore, the march into Austria cannot be considered in connection with the later acts of aggression. It was a special case, based on an obvious predicament, which found its expression since 1918, in the fact that efforts had been made by both the Austrians and the Germans to effect some kind of constitutional union between the barely viable Austrian State and Germany. Therefore, the actual events must be considered apart from Hitler's war plans, and even from his purely military plans of preparation—with which I shall deal later—and must be regarded as the solution of a state political problem which had become acute, and the result of which had always been desired by both sides, independently of Hitler.

Papen's activity in Vienna is clearly characterized by three episodes: The circumstance of his appointment on 26 July 1934; his letter to Hitler dated 16 July 1936—Defense Exhibit Papen-71, Document 2247-PS—after the conclusion of the July agreement; and his recall on 4 February 1938.

The following circumstances led to his appointment. A crucial event had occurred: Dollfuss had been murdered. Not only were

Austro-German relations strained, but they had reached an extremely dangerous stage of development. The international situation was acute. Italy was mobilizing at the Brenner. It was to be feared that Austria would now turn finally to one of the groups of powers interested. A situation which would definitely and finally render impossible the maintenance of even tolerable relations between Germany and Austria seemed to be impending. In this difficult situation, Hitler obviously thought it necessary to discard his objections to Papen's person and to entrust him with the mission in Vienna.

Papen was particularly fitted to initiate a policy designed to overcome the deadlock caused by the assassination of Dollfuss. In the Cabinet, Papen had always been in favor of developing friendly relations with Austria. Papen had an international reputation as being the representative of a reasonable policy of mutual understanding. He naturally had strong misgivings in taking over this post, however. His recent experience in home politics, his personal attitude to his own and his colleagues' treatment on 30 June, his attitude to the murder of Dollfuss, with whom he had remained on the most friendly terms since his previous office, were against his accepting the post. It was, therefore, a very difficult decision for Papen to make; but the consideration that he alone was in a position to fulfill this task in the spirit of genuine appeasement was bound to outweigh everything else. Could he assume that any other man had the necessary strength of will, as well as the power, to insure that the way of appeasement now begun would be followed to the end? The personal independence which he himself enjoyed could not be expected of a German Foreign Office official, much less of a Party man. Papen brought to this his experience as Vice Chancellor. He knew the difficulties of convincing Hitler by arguments of fact alone. He alone had any prospect of insuring a consistent peace policy in the future, in spite of the opposition of Hitler's extremist advisers. On the other hand, he had learned caution from his experiences.

He stated conditions and demanded the establishment of a clear policy based on facts. He demanded that no further influence be exerted on the Austrian Nazi movement, and that this be insured, in the first place, by the dismissal of the man who had played a direct or indirect part in the criminal act—Landesinspektor Habicht. He asked that he himself be subordinated to Hitler personally in order to assure compliance with the conditions as he had proposed them, and to avoid their being weakened by administrative channels. He succeeded in doing something ordinarily impossible in his relations with the head of the State: The conditions under which he accepted the post of Ambassador were laid down in writing. They

were signed by Hitler. He wanted always to be in a position to force Hitler to keep to his written word. We obtain a clear picture of these events through the testimonies given by witnesses, particularly by the statement made by Von Tschirschky, a man who, as the Prosecution have stated, is certainly not suspected of viewing the defendant in a favorable light.

The Prosecution assert that Papen, as a faithful follower of Hitler's already known plans of aggression, had, from motives of sheer opportunism, eagerly and willingly accepted the new post. On the other hand, can the form of the appointment and the extreme precautions taken by the defendant really harmonize with such an attitude? These secret conferences, this unpublished document signed by Hitler, which was in Papen's possession, cannot really be regarded as a pretense made in order to create a false impression, as the charge made by the Prosecution would infer. These things were not intended to be publicized and were, in fact, never made public. The circumstances connected with his acceptance of the Vienna post can only lead us to conclude that Papen was sincerely eager to maintain the appeasement policy agreed upon. It is absurd to speak of opportunism in this connection. Papen had declined the position of Ambassador to the Vatican. The position of Ambassador in Vienna was hardly an enticing post of honor for a former Reich Chancellor and recent Vice Chancellor. The soundness of Papen's own financial situation excluded all thought of material motives.

Papen's letter of 16 July 1936 to Hitler is a report on the success of his many years of work in the interests of settled peaceful relations between both countries. The treaty of 11 July 1936 put the seal upon this. There can be no question as to the value of this document as evidence. It gives a clear account of Papen's assignment and the way in which he carried it out. Papen points out that the task for which he was called to Vienna on 26 July 1934 is now concluded. He considers his work as finished with the conclusion of the treaty. There can be no clearer proof of the truth of Papen's statement, in regard to his task and the way in which it was carried out, than that furnished by this letter.

And yet, what farfetched and dubious motives have been imputed to him in connection with this mission! He is said to have acted as Hitler's willing tool in accepting the task of preparing and carrying out the forcible annexation of Austria. He is said to have been instructed to undermine the Schuschnigg Government and to co-operate for this purpose with the illegal Nazi movement in Austria. Everything he did with a view to mutual appeasement is described as camouflage to help him to carry out his underground plans. And here is a report of his work which is addressed to his employer and is above suspicion. Is it camouflage, intended to create

an impression entirely incompatible with the facts—this letter, found by the Allied troops in the secret archive of the Reich Chancellery, and now obligingly placed at the disposal of the Defense Counsel by the Prosecution?

The third episode which clearly indicates the nature of Papen's activity in Vienna is his recall on 4 February 1938. The numerous recalls and appointments made on that date clearly showed reorganization of the most important military and political posts. The identity of the military men and diplomats recalled makes clear what the sole reason was for the unusual and extensive changes made at that time. If Hitler at such a time recalled Papen from his post, without any other definite cause for doing so, entirely unexpectedly and without giving reason, this clearly proves that Hitler, embarking upon a foreign policy of extremism, no longer considered Papen the right man for Vienna.

These three points are in themselves sufficient and unequivocal proof of the peaceful nature of Papen's activities throughout the entire duration of his Austrian mission. As the Prosecution, however, tries in this case to interpret isolated incidents in a manner unfavorable to Papen, I shall briefly consider this period also.

We see Papen engaged in a steady struggle against the illegal movement. The charge that he had conspired with it is best refuted *ad absurdum* by the fact that plans made by the illegal movement, and stated by Foreign Minister Schmidt to be genuine, reveal that members of this same illegal movement had planned to murder Papen. The documentary evidence from the available reports sent by Papen to Hitler also leads in one direction only. This, too, is absolutely clear proof, since the routine reports regularly made to Hitler certainly exclude any possibility of deliberate deception of the public. It is regrettable that the reports could not be found in their entirety so as to furnish us with a clear and complete historical picture of Papen's activities. Only a fraction of the reports are in our hands. But if Papen sent carbon copies of all his reports abroad at the end of his period of activity, as the evidence has shown, he surely could only have done it in order to justify his policy of appeasement in the eyes of history. This constitutes absolutely clear proof that his policy, as shown in the complete series of reports, must have been a policy contrary to the development affected by other quarters in March 1938. All the witnesses who have appeared in court, and who could give information on conditions in Austria, have stated under oath that Papen's policy was a policy of appeasement, and that he opposed any attempts made by the illegal movement to interfere in politics.

In view of these facts, what can be concluded from the presentation of the Prosecution? That Papen, by reason of his position as

German Ambassador, and in accordance with the state treaty concluded with Austria, had to maintain a certain external connection with members of the Austrian Nazi movement—a connection which was in no way secret, which was purely for purposes of observation, and which was necessary to enable him to fulfill his obligations to report to Berlin on actual conditions in Austria? If he had actually collaborated with the illegal movement in the way the Prosecution state he did, this would most certainly have been mentioned in his reports to Berlin. He does not work out any secret plans with the illegal movement. On the contrary, we see him openly negotiating with the Austrian Government over the part to be played by the National Opposition in the work of the Government, as agreed upon in the July treaty. Finally, since we have before us in Rainer's report the written history of the illegal movement, we see their activities proceeding during those years without the slightest co-operation or support from Papen.

What conclusions can be drawn to the disadvantage of the defendant from the fact that he was interested in the activities of the Austrian Freiheitsbund, when this organization is described as representing a non-Nazi trade union, an Austrian organization which was thought to be willing to follow Schuschnigg and in support of his Cabinet? What conclusions can be drawn to the disadvantage of the defendant from the fact that he also watched the situation of the Government in Austria and reported on it to Berlin? Or when, in this connection, he expresses a wish that this or that combination may favor the development of friendly relations with Austria?

During the cross-examination the Prosecution presented reports from offices abroad, which Papen forwarded to Berlin. They believe that Papen had made use of the contents of these reports. This supposition must be wrong. The object of sending reports made by the foreign secret service to Berlin for purposes of information is clear. In addition, the following facts must be established: Papen also made a special point of forwarding to Berlin those documents containing criticism of conditions in Germany which came into his hands; the witnesses Gisevius and Lahousen have pointed out that Hitler was incorrectly or insufficiently informed by his closest coworkers; the critical reports originating abroad, which Papen sent directly to Hitler, could fulfill the aim of drawing Hitler's attention to abuses and of making him abolish them, and they were intended to do so—this is particularly often the case with statements about anticlerical conditions in Germany. The same applies to the reports on the activity of the Gestapo in the Tschirschky case—these have already been mentioned in the course of cross-examination. Some of Papen's regular reports to Hitler also deal with conditions in neighboring states. Inspection of their contents shows that these

reports deal entirely with problems directly connected with Austria's foreign policy in the Balkans and, therefore, formed part of the assignment of the accredited Ambassador in Vienna.

Finally, Messersmith's affidavit must be considered. He describes events which happened 10 years earlier in Papen's case, apparently entirely from memory. Time and information acquired later have obviously clouded the picture so completely, for example, that Papen's explanations of his assignments in the southeastern area, contained in both affidavits, are two altogether different accounts. Apart from this, I may limit my criticism to the statement that the contents of the affidavit run counter to every rule of experience and logic. A diplomat cannot have revealed the secret aims of his policy to the representative of another state who meets him with deliberate reserve. It is impossible that Papen should, as Messersmith says elsewhere, not only have revealed to him his alleged plan to overthrow Schuschnigg—to whose Government Papen himself was accredited—but that he should even have spoken of it in public. It is impossible that such disclosures should have produced no reaction, and that they should have been written down for the first time in an affidavit made in 1945. No judgment can therefore be based on these two affidavits, even apart from the fact that their contents are refuted by the other evidence submitted with regard both to Papen's plans and to his actions.

I return to Gavronski's questionnaire, which was read yesterday—Document Papen-106. The answers which the Polish Ambassador Gavronski gave to this questionnaire form a thorough refutation of the Messersmith affidavit. This testimony from the diplomat of a country with which Germany was at war, from September 1939 on, seems particularly remarkable. Gavronski had an opportunity of observing Papen during the whole period covered by his activities in Vienna, from 1934 to 1938. In answering the questionnaire, the year 1937 was given by mistake, instead of 1934—which is correct—as the beginning of Gavronski's activities in Vienna. All the charges which Messersmith makes against Papen—his collaboration with the illegal Nazi movement, the carrying on of intrigue, the plan to overthrow Schuschnigg's regime, the policy of aggression in the southeastern area, the partition of Czechoslovakia between Poland and Hungary—are all refuted by Gavronski's testimony.

In addition, I refer to Rademacher von Unna's affidavit, part of which was read yesterday. By his refusal to enter into a secret agreement with an Austrian minister, Papen shows very clearly that he was not engaged in subversive activities, since he refused to take advantage of this propitious and convenient opportunity. I believe this suffices in regard to the period during which Papen acted as Ambassador Extraordinary in Vienna.

In addition, the Prosecution have taken into consideration Papen's co-operation in the discussion at Berchtesgaden on 12 February. This Berchtesgaden conference was not the beginning of a new policy, but the result of previous development. In conversations held months before, Papen and Schuschnigg had already decided that a meeting between the two statesmen would be desirable in the near future. The July treaty had naturally left many points of difference unsettled. The testimony of the witness Guido Schmidt has given us a clear picture of the situation; a numerically strong opposition party, officially prohibited but tacitly tolerated—as a result of actual circumstances—and looking for all its ideological guidance to the man in Germany who was—spiritually at least—its leader. In Germany the leader of the Party was, at the same time, head of the state. From the standpoint of foreign policy, it was necessary to separate the parties in both countries. The inner ideological unity was bound, however, to lead to repeated disputes. The Austrian Government accordingly maintained an understandable attitude of reserve, and made constant efforts to prevent this movement from increasing its influence in the administration and Government. The questions arising from the July treaty were in practice treated in a manner suitable to these interests. It was natural that Austria should try to apply the stipulations of the treaty on as restricted a scale as possible. It was only natural that Germany should wish to make the fullest possible use of the opportunities offered by the treaty. The establishment of direct contact between the responsible heads of both countries—and in the case of Germany this meant also the head of the Party—could only be regarded, therefore, as reasonable. Papen's recall on 4 February threatened to interrupt this development. Perhaps the adoption of the extremist line of policy, which was expected, would cause the indefinite postponement of a meeting of this kind, which it was hoped would speed the removal of existing difficulties. To say the least of it, the results to be expected at a later date, and in a tenser atmosphere with an extremist successor, might be very different from those which Schuschnigg and Papen were hoping to attain. It is therefore perfectly understandable that, when discussing business with Hitler during his farewell visit on 5 February, Papen, although he had already been recalled, agreed to make definite arrangements for the prospective conference and to accompany the Austrian delegation to Berchtesgaden for this purpose.

The Prosecution reproach Papen with the fact that the program for the subsequent talks had already been settled at that time. Contrary to this, Papen testified in his interrogation that he was only instructed to arrange the discussion in order to clear up all points of difference on the basis of the July treaty. The Prosecution have failed to submit proof for their claim to the contrary. In view of

Hitler's personality, no conclusions can be drawn from the events of 12 February as to his real thoughts when such a meeting was first mentioned on 5 February, much less as to how much of his plans he had made known. The evidence has shown that the points voiced by Hitler on 12 February are identical with the demands raised by the Austrian National Socialists immediately before the discussion and transmitted to Hitler through their own channels. From this it can be seen that the subject of conversation chosen by Hitler in the discussion of 12 February could certainly not have been decided upon on 5 February. If the Austrian Nazis hurried to Berchtesgaden ahead of Papen with their demands, this refutes the Prosecution's opinion that Papen had conspired with Hitler and the Austrian party. In this case he himself would probably have been the best liaison between the Party wishes and Hitler. This is further emphasized by the testimony of the witnesses Seyss-Inquart and Rainer, who have stated clearly that they had no contact with Papen during this period. Rainer also points out in his report that Papen believed that the fact of the prearranged discussion was kept secret from the Austrian party.

In order to incriminate Papen, the Prosecution also claim that at the reception of the Austrian delegation on the German-Austrian frontier he had called Schuschnigg's attention to the presence of generals. Whether this is really in accordance with the facts was not disclosed by the evidence. The sole evidence which can be used in respect to this is the testimony of Schmidt. The latter was no longer in a position to state with certainty whether Papen had spoken of one general, namely, Keitel, who is known to have remained constantly in Hitler's entourage after taking over his new office—or of several generals. Papen himself does not remember whether, and in what form, he made such a remark to Schuschnigg at the time. Neither does he remember whether he was at all aware of the presence of generals at the time. It is quite possible that it came to his knowledge on the night spent in Salzburg, where he stayed at a different hotel from that of the Austrian delegation. In any case, we cannot overlook the fact that even if Papen had made the statement alleged by the Prosecution, this statement was made before the visit, and he therefore did not take part in any attempt at intimidating the Austrian delegation and taking them by surprise.

The part he took in the discussion has been clarified by the evidence. Hitler was in sole command and, with a brutality which surprised even those who knew him, tried to impress Schuschnigg. Technical details were negotiated with Ribbentrop. Papen was present more or less in the capacity of a spectator, which also was accounted for by the fact that he no longer occupied an official position. The testimonies of those who attended the conference are

unanimous in stating that he viewed his part in the proceedings as that of exerting a modifying influence, which the circumstances made necessary.

His position must be taken into consideration; he saw his project doomed to failure through Hitler's behavior, which was such as no reasonable human being could have anticipated. He saw a man with a naturally violent temper in his excitement betray his lack of all the qualities necessary for a reasonable discussion at a conference of statesmen. He heard Hitler's threats, and was bound to feel that he was determined to let things take an irrevocable course should the negotiations be broken off abruptly. Considering the situation, therefore, the fact that certain concessions were obtained—Hitler acquiesced with regard to the Army Ministry, the economic demands, and the postponement, achieved after a hard struggle, of the final settlement until ratified by the Austrian Government and the Federal President—was the best possible solution of the dangerous situation. Although in this point Papen agreed with the Austrian statesmen, who undoubtedly were only prepared to sign the document provisionally while safeguarding the interests of their State to a reasonable degree in the prevailing conditions, Papen cannot be charged with approving and intending the result from the outset.

Hitler's opinion of Papen's previous activities in Austria and the part he played in the conference at Berchtesgaden is best shown by the fact that no further post of any kind was assigned to him in Vienna. It is highly unlikely that Hitler would not have given some assignment to a man who was wholeheartedly and actively interested in the result of the conference at Berchtesgaden. He would not have replaced him by new men from Berlin, nor, at a time when the diplomatic situation was becoming increasingly complicated, would he have dispensed with the services of the man who, by reason of his years of service, had an intimate knowledge of all the conditions. The personal contacts with Austrian statesmen, which qualified him more than others to continue working on Hitler's plans, would certainly have been utilized. If the Prosecution were correct in interpreting as deceitful the maneuvering by which Papen attempted to bring about an understanding during the discussion in Berchtesgaden, there is little doubt but that Papen would have been permitted to continue working along these lines, and would not have been replaced by men instructed to carry on a program along much more radical lines.

Papen's memorandum on his farewell visit to the Prime Minister is revealing. A man who in his own commentary to Berlin passes on Schuschnigg's view—that to some extent he had acted under pressure in Berchtesgaden—as "worthy of note" is not likely to have played an active part in the coercive negotiations.

The record of evidence has proved that Papen held no further public appointments for some time afterward. The new Chargé d'Affaires, Freiherr von Stein, a pronounced National Socialist, took charge of the Embassy. He was assisted by Keppler, a close confidant of Hitler. Papen, on the other hand, made his farewell calls and went to stay at Kitzbühel, a winter sport resort.

In the meantime things grew more and more critical. The plebiscite announced by Schuschnigg led to a development the proportions of which perhaps even Hitler had not intended. The visit of Seyss-Inquart and Rainer to Papen on 9 March was only a casual one; there were no deliberations of any kind and no decisions were made. If Papen, as Rainer asserted, expressed the view that, considering the way in which the questionnaire was formulated, no decent Austria could be expected to say "no," and was therefore bound to follow Schuschnigg's instructions, that suffices to indicate the contrast between Papen's views and those of the Austrian Nazis and the intentions which were subsequently made plain in Berlin.

If, in conclusion, I may still refer to Papen's presence in Berlin on 11 March, I must say that even when I consider the matter in retrospect, I can give no clear explanation for Hitler's desire to have Papen in Berlin. There might have been many reasons. If Hitler had been, at that time, already determined to force the solution which was later adopted—although there may be doubts as to that—the reason might have been that he did not trust this representative of appeasement in Vienna, or that he assumed that the desperate position in which they found themselves might induce the Austrian Government officials to turn to him, and that with Papen's help proposals for a settlement might have been made. I may remind you of a similar situation prior to the beginning of the campaign against Poland, when Hitler was afraid "some swine might still come along at the last minute with a proposal for an understanding." On the other hand, it is also quite conceivable that Hitler wished to have Papen in Berlin so that, in the event that the Austrian Government yielded, he might not be deprived of the advice of a man who was familiar with conditions. As far as the Indictment is concerned, any attempt to understand Hitler's real motives is superfluous.

The sole deciding factor is constituted by Papen's actions while he was in the Reich Chancellery. Upon his arrival he expressed to Hitler his desire that the tension be lessened by a postponement of the plebiscite. His attitude toward later events is documented by his comments on the military preparations and the cancellation of the order to march in. The shorthand notes of the telephone conversations carried on by Göring afford us a vivid picture of the

events in the Reich Chancellery. His testimony shows that, in the main, he was the driving force, and occasionally went even further than Hitler intended. He emphasized that he had all along made consistent efforts to find a solution, and that he now needed no further advice and no further time to reflect on his decision. Seherr-Thoss' affidavit makes clear Papen's attitude on the evening of the day in question. He remarked to a circle of friends that he had advised against marching in, but that Hitler, against his advice, had just been "mad enough to give the order to march in."

Finally, we find another clear expression of Papen's attitude in his conversation with the witness Guido Schmidt, which took place years later. At that time, the annexation of Austria had long been a historical fact, and was considered by most Germans to be a great political achievement. Papen, on the other hand, severely criticized Hitler's method and acknowledged anew those fundamental principles of legality and faithfulness which in this case had been abandoned—a step which, in the long run, would prove harmful to Germany.

My conclusion is that—independent of the legal question of whether the case of Austria can be dealt with at all within the limitations of the Charter—Papen's defense is completed by the production of evidence to the effect that the defendant himself played no part in bringing about the march into Austria, nor did he prepare the way for it by a policy directed to that end; and that his activity in Austria was exclusively directed toward the aim which he assumed on his appointment on 26 July 1934—a policy which was to restore friendly relations between the two countries—a lawful aim which had no connection with a special or general policy of aggression.

I should like to make the following remarks, which are not in my manuscript. This aim taken over by Papen is in no way contrary to the hopes, cherished since 1918 by the overwhelming majority of Germans and Austrians, for some form of close constitutional union as the result of a normal development. It was clear that in view of the existing restrictions imposed by the peace treaties, a good many difficulties would have to be overcome. But was Papen not in a position to assume with a clear conscience that the parties to the treaty would not refuse to sanction a wish of both peoples, a wish furthered by the political and economic impossibility of maintaining the *status quo*? Was this not the moment to apply the principle of the self-determination of peoples, the great principle of the twentieth century? The many opinions expressed abroad at the time—his talk with Ambassador Sir Nevile Henderson, mentioned in Papen's report of 1 June 1937, Defense Exhibit Papen-74, Document 2246-PS; the attitude of neighboring

countries, which is also shown in the report, and, finally, the progress made in handling the question of reparations—might lead him to hope that the solution might some day be found in an international understanding. The first necessity for this was the initiative of a sovereign and independent Austrian Government. This could be based only on a genuinely friendly relationship with Germany. Papen's mission might, therefore, be a basis for the fulfillment of the national wishes publicly expressed in both states.

I continue from my manuscript.

The subsequent period is not taken into consideration by the Prosecution; but the Defense must deal with it for the purpose of refutation. It is a simple matter to establish facts, in connection with this period, which prove that the assertions made by the Prosecution, with regard to the earlier period, must be false. The Prosecution drop Papen at the end of his activities in Vienna and give no explanation for his inactivity since that time. There is no apparent reason or occurrence which might have induced such a change in conduct on the part of the alleged conspirator.

We now come to the period covering the immediate preparations for war and the outbreak of the war itself. The Prosecution assume that, at this time, in spite of the numerous opportunities which must have been open to him, the former conspirator Papen abandoned his previous course. The Prosecution must find some explanation for this transformation if the arguments by which they attribute a criminal intent to the actions of the earlier period are not to be considered inconclusive.

After the incorporation of Austria, Papen retired to the country and remained there, aloof from public life for over a year, until April 1939. This fact is significant in the light of the situation at that time. The events of 4 February 1938 were doubtlessly responsible for the adoption of a more rigorous course in German foreign policy. In the opinion of the Prosecution Papen was Hitler's willing tool in the actions which preceded and paved the way for this policy. If this were the case, the results achieved by Papen would cause him to be regarded as a hundred-percent successful diplomat. But this most successful diplomat and conspirator does not proceed to some place where he can continue his activities, and where similar preparations might be necessary as, for example, the Sudetenland. He is not sent to some place, where the main strands of European politics cross—in Paris, London, or Moscow, where, on the basis of his international reputation, he would undoubtedly seem the most suitable man to support the Hitlerite policy. This man retires from public life at a time when Hitler's whole foreign policy, the Sudeten crisis, the incorporation of Czechoslovakia, and the preparations for the war against Poland were creating great

political tension. The fact that Hitler did not even consider his services at such a time makes it quite clear that Papen was not a conspirator and not even a follower of Hitler and that he did not even bring about the first success won by the Hitlerite policy—the incorporation of Austria.

From this angle, too, it is significant that Papen was first called upon when there was no question of occupying a country or of preparing for intended operations. Papen was called upon at a time when the Italian policy of expansion into Albania was causing difficulties, and complications with Turkey were to be feared. So there he had a clearly defined mission, that of maintaining peace.

The Prosecution is unable to utilize his activities in Ankara in support of his case; it cannot refrain from judging Papen's acceptance of the post unfavorably. I am therefore compelled to go into this point also.

Papen was very reluctant to accept this new appointment. He had already refused the appointment twice, in more peaceful times on general grounds, and because he no longer wished to accept any official position. Now he sees reasons which he can no longer refuse to acknowledge. He believes it his duty to devote himself to this new task. The entire political situation was extremely strained after March 1939. Even a secondary issue might easily cause a large-scale conflict. A conflict between Italy and Turkey could, if existing treaties were honored, lead to a general war. If by his activities he could, to this extent at least, prevent war, Papen must have believed himself justified in accepting the assignment. He was confronted with the problem which confronts all those called upon to play a part in a system of which they disapprove. To stand aside and to remain completely passive is, of course, the easier way, especially if there is no other reason which might induce the person in question to accept the post. It is much more difficult to take over a mission which forms part of a general policy of which one disapproves, but has in itself an aim worthy of attention. And if this mission is of such importance that it may prevent possible outbreak of war, the decision to accept it is understandable and praiseworthy. Private interests and feelings must take a back seat if there is even the remotest possibility of attaining such a goal.

When we consider briefly what Papen really did after taking over this mission to Ankara, and see that, as a result of his intervention in the spring of 1939, it was possible for Germany to exercise a moderating influence on Italy and for war to be avoided; and if we further consider that Papen succeeded later on in preventing the war from spreading to Turkey and the other south-eastern countries, we can only say, in the light of events, that in

taking over the mission against his personal feelings, he made the right decision.

During the presentation of evidence we saw the extent of Papen's efforts to secure a peace through compromise as early as the year 1939. We must therefore approve his acceptance of the mission for this reason also—no matter what final success might crown his efforts, and even if there was only the smallest possibility of attaining the desired goal. Finally, his acceptance of such a position would be justified from the moral point of view if he had had even an infinitesimal success, as, for example, the rescue of 10,000 Jews from deportation to Poland which has been confirmed by Marchionini's affidavit.

In this connection I want to discuss a misunderstanding which might arise from the judicial inquiry with reference to this affidavit. Marchionini points out in his affidavit that the lives of the Jews concerned were saved by Papen's intervention. On being interrogated Papen confirmed the correctness of the affidavit. This confirmation corresponds also to the facts. This does not mean, however, that the significance of that action, as recognized by Marchionini today, and mentioned for that reason in his affidavit, was recognized at the time. Papen knew, of course, that this deportation to Poland for an unknown purpose, and to an unknown destination, was an extremely serious matter. For that reason he intervened. Like Marchionini, he did not know what he now knows very clearly—namely, that the path of these people was destined to lead them not into deportation and hard labor, but straight to the gas chambers.

Now I should like to refer to Document Papen-105, the questionnaire filled out by the last apostolic nuncio in Paris, Roncalli, who describes in detail from his own personal knowledge the steps Papen took in Church affairs and his attitude toward them.

His Ankara activities have been described in detail by the witnesses Kroll and Baron von Lersner. They clearly indicate a unified peace policy, a peace policy which was independent of the military and political situations of the moment, and which laid stress on a peace through compromise even at the peak of the German victories. Rose and Kroll state that Papen was horrified by the outbreak of the Polish war, and that he condemned it from the first.

How can this attitude and these activities be reconciled with the assertions of the Prosecution? Papen is supposed to have brought about the war in conspiracy with Hitler. The Prosecution believe they can deduce his guilt in this criminal act from his behavior years before the war. No facts have been submitted to show what might have turned the conspirator Papen into an

advocate of peace. The Prosecution have rested their accusations on the insecure foundation of deduction and omitted examining whether their assertions were even remotely in accord with the whole personality of the defendant. In view of the nature of the Indictment, it is not enough to solve the problem by crediting him with a split personality and an opportunist attitude. The Indictment includes crimes of monstrous proportions. Such an Indictment must also take into consideration the personality of the accused. Participation in such conspiracy is only conceivable in the case of a man who identifies himself completely with the doctrines discussed in the proceedings under the name of "Nazism" and accepts their full implications. A conspirator, in the sense of the Indictment, can only be a man who has dedicated his whole life and personality to that aim. He must be a man no longer conscious of even the most elementary moral obligations. A personality of this kind cannot be a temporary phenomenon; the predisposition to such a crime must be present in the character of the accused.

In contrast to the distorted picture of Papen's character drawn by the Prosecution, his true personality has appeared very clearly in the course of these proceedings. We see a man whose origin and education are on traditional and conservative lines—a man of patriotic feeling, conscious of responsibility toward his country, and who for precisely these reasons is naturally considerate of his fellows. His personal ties with Germany's western neighbors and his knowledge of the world suffice in themselves to prevent him from looking at things from a one-sided point of view—according to his own patriotic wishes. He knows that life requires understanding and readiness to understand. He knows that international life, too, is built on sincerity and faith, and that one must stand by one's word. We have before us here a man who, on account of his deep religious feeling, the principle on which all his actions are based, must necessarily oppose the ideology of National Socialism. We have followed his political career and have seen that through all the periods of his activity he held fast to his basic political creed, which was built on these elements. In accordance with this fundamental principle and with full consciousness of his responsibilities, he did not evade any of the tasks assigned to him. And though at the end we witness the collapse of his hopes and the failure of his endeavors, this is no touchstone for the sincerity of his convictions.

To arraign such a man at all under the charge of committing a crime in the sense of the facts established in the Charter was surely only possible on the basis of the simplifications which an Indictment on the count of conspiracy offers to the Prosecution from the legal point of view. Considering the facts in the case against

Papen, even this interpretation must fail. The Prosecution have failed to prove that Papen, at any time, was involved in the alleged conspiracy. The truth is opposed to this. In the evidence offered in refutation, facts are established which make it impossible to connect his person even remotely with the facts of the Indictment.

The final conclusion is obvious: Franz von Papen is not guilty of the charge brought against him.

THE PRESIDENT: The Tribunal will adjourn.

[A recess was taken.]

THE PRESIDENT: I call on Dr. Flächsner, Counsel for the Defendant Speer.

DR. HANS FLÄCHSNER (Counsel for Defendant Speer): Mr. President, may it please the Tribunal:

The Prosecution have charged the Defendant Speer with violations of all four points of the Indictment which essentially covered the stipulations of Articles 6(a) to (c).

The French Prosecution, which substantiated more definitely the individual charges against the Defendant Speer, refrain from charging him with the violation of Article 6(a) of the Charter and demand only the application of Articles 6(b) and (c) against him. However, since the legal concept of conspiracy has frequently been dealt with during the oral proceedings by citing the person of the Defendant Speer as an example, and since it was asserted that the Defendant Speer also had made himself guilty within the meaning of Article 6(a) of the provisions of the Charter, details must be given by way of precaution.

The defendant has, in addition, been charged with the planning, preparation, launching, or conduct of a war of aggression, or a war violating international treaties, although at the time when the defendant assumed the office of Minister of Armaments—which was only expanded to a Ministry for Armament and War Production 1½ years later—the German Reich was already at war with all the countries to which it capitulated in May 1945. Thus, at the time the defendant took charge of government affairs, all the events mentioned under Article 6(a) had without exception taken place, and the Defendant Speer's activity did not alter the existing situation in the slightest degree.

The defendant had done nothing at all to bring about this situation. His previous activity was that of an architect, who occupied himself exclusively with peacetime construction and did not contribute by his activity either to the preparation or the launching of a war violating international treaties. I refer to my document book, Page 19, Document 1435-PS.

If the circumstances which Article 6(a) of the Charter materially and legally characterizes as criminal acts were applied to international law, and if the individual criminality of persons who bring about these conditions were generally recognized in international law, the Defendant Speer in my opinion could still not be held responsible for these conditions; for not the slightest evidence has been produced during the Trial thus far that Speer contributed in the least toward bringing about these conditions. In this connection we must consider that criminality of attitude requires that the person in question must have contributed in some way to bring about the circumstances which have been declared punishable, that is, he must have functioned as a cause of the result which was declared punishable. If, however, as in the case under consideration, the Defendant Speer entered the Government without having contributed anything at all to the so-called Crimes against Peace, he cannot be charged with criminal responsibility for this, even if such responsibility were applicable to other members of the Government.

The Prosecution have asserted that by joining the Government the defendant had accepted, or rather approved of, the preceding Crimes against Peace. This is a concept taken from the field of civil law, and it cannot be applied to criminal law. Criminal law applies only to circumstances consisting of actions which serve to bring about the circumstances declared punishable. Nor is this altered by the introduction of the legal concept of conspiracy. In this connection reference may be made to Dr. Stahmer's detailed statement on conspiracy. The legal views set forth in that statement are also made the subject of my own statement. I refer to it, and to Professor Jahrreiss' statements, in order to avoid repetition. It can, therefore, be confirmed that the Defendant Speer cannot be charged with a so-called crime against peace.

The personal interrogation of the defendant and the cross-examination regarding his activity in the Party have shown that Speer, by virtue of his position as an architect, exercised purely architectural and artistic functions even in the Party set-up. Speer was the Commissioner for Building in the Hess staff; it was a purely technical assignment and had nothing at all to do with any form of preparation for war. The Party, which strove to seize and influence all the vital functions of the people, had created the position of Commissioner for Building, to insure uniformity in Party buildings. In their building projects, the Gauleiter and the other Party offices could confer with this office, but they availed themselves of the opportunity only to a very limited extent.

THE PRESIDENT: Dr. Flächsner, the Tribunal think it might be appropriate, at some time convenient to you, if you were to deal with the question of the meaning of the words "waging of warfare

of aggression" in Article 6 (a). I don't want to interrupt you to do it at this moment in your speech, but at some time convenient to you the Tribunal would like you to give your interpretation of the words in Article 6 (a) "waging of a war of aggression."

DR. FLÄCHSNER: Yes, Mr. President. Perhaps I might return to this point later, Mr. President, when I have concluded this topic.

Naturally, it was for purely artistic reasons that the Party took over responsibility for building. It strove to give its buildings a uniformly representative character. Considering the peculiar nature of the architectural feeling, it was natural that each architect should follow his own line in solving the problems put to him. The activity of the defendant as Commissioner for Building was, therefore, relatively restricted and of minor importance, since he did not even have an office of his own at his disposal. It would be erroneous to try to deduce therefrom any participation by the defendant in any Crimes against the Peace. The same is true of the defendant's other functions prior to and during the war up to his assumption of office as Minister.

Although the defendant was given the ask of replanning the towns of Berlin and Nuremberg, this activity had nothing at all to do with Crimes against Peace. On the contrary, his activities must rather be regarded as hampering war preparations, as his task required large quantities of raw materials and equipment which might otherwise have been used directly or indirectly for rearmament. The construction projects assigned to Speer were, moreover, calculated and planned far ahead. They could only give Speer the impression that Hitler was counting on having a long period of peace. The defendant cannot, therefore, be said, prior to his assumption of office as Reich Minister, to have contributed directly or indirectly to the emergence of the events characterized by Article 6 (a) of the Charter as Crimes against Peace. The fact, too, that the defendant was a member of the Reichstag after 1941, cannot be quoted in support by the Prosecution because, as the Prosecution themselves pointed out, the Reichstag sank into complete insignificance under the totalitarian regime and became merely an institution which accepted and acclaimed the Führer's decisions. Responsibility for war guilt is out of the question here, too; for no activity on the part of the Reichstag in connection with extending the war to the Soviet Union and the United States can be recognized.

The French Prosecution, therefore, rightly refrained from charging the defendant with the violation of Article 6 (a) of the Charter.

The Prosecution further charge the Defendant Speer with having participated in War Crimes committed during his term of office by

forcibly transferring workers from the occupied countries to Germany, where they were employed for the purpose of warfare or of producing war materials. The following should be said in this connection.

The Prosecution charge the defendant with violations of Article 52 of the Hague Convention on Land Warfare, which states that services may only be demanded of nationals of the occupied country to cover the requirements of the occupying forces, that they must be in proportion to the resources of the country, and that they must not oblige the persons concerned to take part in military actions against their native land. In Article 2, the Hague Convention on Land Warfare lays down that all countries participating in the war in question must be signatories—general participation clause (Allbeteiligungsklausel). As the Soviet Union was not a signatory of the Convention on Land Warfare, the latter could apply to conditions created by the war against the Soviet Union only if the legal principles laid down in the convention were considered as universally valid in international law. We must start, therefore, from the principle that those areas belonging to signatories of the Hague Convention on Land Warfare must be judged on a different legal basis from areas belonging to nonsignatories of the treaty.

In examining the question, we must first decide whether the deportation of laborers from territories occupied in wartime by an enemy power can be justified on the basis of Article 52 of the Hague Convention. Article 52 constitutes a limitation of Article 46 of the Hague Convention on Land Warfare, which lays down the principle that the population of occupied territories and their property are in general to be subjected to as little damage as the necessities of war will allow. Starting from this principle we must examine whether it involves the absolute prohibition of deportation for the purpose of securing labor for the essential war economy of a belligerent country. It must be remembered in this connection that the situation is altered if the deportation carried out by the occupying belligerent state is in accordance with agreements made with the government of the country occupied. The Prosecution have defended the view that such agreements are legally invalid because they were made under the pressure of the occupation and because the Government existing in France during the time of the occupation could not be considered as representing the French nation.

The first point does not support the Prosecution's contention. The contents of treaties concluded under international law will always be influenced by the respective power of the contracting parties. In every peace treaty concluded between a victor and a vanquished state, this difference of power will be reflected in the

contents. This is not, however, contrary to the nature of treaty-making.

The second point, by virtue of which the Prosecution reject the plea of an agreement between the German Government and the French Government, then in power, relating to the assignment of labor, is equally ineffectual. The so-called Vichy Government, then in power, was the only government existing in French territory; it was the lawful successor of the government in office before the occupation—and from the point of view of international law—by the fact that states which were at that time not yet involved in the war maintained diplomatic relations with it.

It cannot, moreover, be assumed that the willingness shown by the French Government in this agreement to co-operate with the German Reich, which was then gaining military victories, ran counter to the real opinion of the French people. Reference can be made in this connection to Document R-124, Page 34 of my document book. Particular attention must be paid to the economic situation of occupied France at the time. After France's withdrawal from hostilities, the total blockade was extended to cover the whole of French territory in Europe, with the result that raw materials not produced in France were no longer obtainable, and production came to a standstill. Important sections of French production were, in this way, put out of action, and many workers deprived of the means of earning a living. In addition, the French Government did not pledge themselves unconditionally to send labor to Germany, but made this dependent on concessions such as the liberation of prisoners of war, *et cetera*.

Whether, and in what measure, the hopes placed in the treaty by the French Government were actually fulfilled, is irrelevant in determining whether the treaties in question were authentic treaties or not. From the legal point of view, there is no doubt that these agreements have the character of treaties. From this point of view, there is no justification for the accusation made by the Prosecution that workers were taken from occupied French territory against their will and, therefore, illegally.

No judgment of the legality of the measures relating to the workers from Belgium and Holland can be based on agreements such as those concluded between the German and French Government offices, since in those countries the Government had left the country, and consequently no political authority existed. The general secretaries remaining there could not be considered as representatives of the Government, and the decrees regulating the dispatch of workers to Germany were enacted by order of the Reich commissioners or the military commander. Dr. Steinbauer in his exposition on the Defendant Seyss-Inquart's activities in

Holland has already explained in detail that particular rules must apply to those countries and to the dispatch of laborers from them. In order to avoid repetition, I refer you to these remarks.

With regard to the Eastern countries, we must start with the fact that the Soviet Union did not sign the Hague Convention on Land Warfare. It remains, however, to be seen whether the principle laid down in Article 46 of the Hague Convention on Land Warfare, with reference to the treatment of civilians in war, and the case of occupation of a belligerent country by the enemy, must not be considered as a universally valid international law and therefore applicable even if the belligerent country concerned is not specifically a party to the Hague Convention on Land Warfare. An examination of this question would show the deportation of workers from occupied territories to be illegal unless some special factor emerges to cancel its illegality. A state of emergency in the sense of international law can be considered as one such factor. It is true that it is a matter of international law whether and in what measure such an emergency can legalize a practice which is in itself illegal; but such a state of emergency must be admitted in cases when the state is fighting for its bare existence.

It may be considered that after the Allies had declared the unconditional capitulation of Germany to be their goal such a state of emergency existed for the German State, since there remained no doubt that the enemy intended to destroy the existing German State to its very foundations. This state of emergency may, however, be considered as existing at an earlier period, when it became clear that the war had ceased to be a settlement of differences between two states, in the sense of the Hague Convention on Land Warfare, and had become a war aimed not only against the fighting forces of the belligerent nations but also, and primarily, at their economic forces, and thus at their so-called war potential.

The Hague Convention on Land Warfare is based upon a conception of war which was already out of date in the first World War and much more so in the second. If in the first World War the belligerents sought to attack each other's economy by blockade and counterblockade, this is all the more true of the second World War, in which, in addition to the more indirect effects of the blockade, they introduced the element of direct attack on the enemy by destroying his productive installations by means of aerial war. In contrast to the conception of war on which the Hague Convention on Land Warfare is based, a complete change has come about. In view of the fact that a country can only resist an adversary who is well-equipped from the technical point of view if it has at its disposal an unimpaired capacity for production, the main objective in this war was the destruction of the enemy's capacity

for production. This was the aim of the British blockade not only of Germany but of every country in the German sphere of influence. Dr. Kranzbühler has already discussed the questions connected with this subject. I herewith refer to the relevant parts of his statement.

From this point of view, too, the war in the air was waged primarily not only to attack German national territory but also to destroy production capacity and possibilities in the occupied territories. Through continual air raids, the aerial war was directed against economic targets in France, Belgium, Holland, Czechoslovakia, Poland, and Austria, and had as its further aim the interruption and disruption of the whole system of communications—not only on the front and immediately behind it but also hundreds of kilometers away from it—in order to paralyze vital functions of the adversary. The Allied air offensive against Japan is a particularly clear indication of this. This war went beyond the bounds of the Hague Convention on Land Warfare. It ceased to make any further distinction between the adversary's territory proper and the occupied territories, which were likewise included in the enemy blockade. In this war which sought not only to destroy the adversary as a nation but also to ruin its economic system and its power of production, we may speak of a real national emergency.

When the Defendant Speer was appointed Minister, the economic war just described was in full swing on both sides. In fact, the task assigned to Speer's department was that of solving the production problems caused by it. Speer, therefore, found himself in the thick of this war of economies; and we now have to decide whether, and to what extent, the measures taken on the German side were capable of alleviating the state of emergency.

THE PRESIDENT: Dr. Flächsner, I would like to ask you this question. Is there any communication between states, either at the League of Nations or elsewhere, since the war of 1914-18, which suggests that the Hague Rules on Land Warfare were no longer applicable? Perhaps you would consider that question and answer it at your convenience?

DR. FLÄCHSNER: Mr. President, I can answer this question immediately in the negative. In the period between the two wars, these problems were dealt with only very superficially and, as far as I am acquainted with the facts, the questions considered lay in the sphere of naval warfare and also land warfare in connection with the treatment of prisoners of war. The Hague Convention on Land Warfare itself contained no additions or amendments whatsoever, apart from separate agreements concerning particular methods of conducting warfare. I might add that in the meantime various methods of warfare have been banned by treaties. But, as

far as principles are concerned—and that is the basis of my argument—the principles laid down in the Hague Convention have undergone no changes through treaties in the meantime.

THE PRESIDENT: Yes. Then I understand you to say there has been no communication between states, since the 1914-18 war, which suggests that the Hague Rules on Land Warfare are no longer applicable?

DR. FLÄCHSNER: Yes, that is correct.

We must decide whether, and to what extent, the measures taken on the German side were effective in remedying the state of emergency. In the course of the Trial, the Prosecution have claimed, on several occasions, that the imported labor was to be used to release workers for service at the front. This is certainly one reason why the recourse to foreign workers was used, but it is by no means the decisive reason—not even the most important reason. It is a fact that the total blockade of the German Reich carried out by the adversary compelled the Reich to an increasing extent to build plants for the production of substitute raw materials in order to carry on the war in the technical form which it had now assumed. It is also a fact that the disturbances caused in economic life by aerial warfare made it essential to employ an increased number of workers. As an example, let me say how much additional labor was necessary for the repair of air raid damage. This situation involved a state of emergency insofar as the waging of a war of self-preservation would no longer have been possible without the erection of such additional production plants.

Should it be contended that it is impossible to speak of an emergency overriding the illegality of the proceedings in terms of international law, since the war was begun as a war of aggression and was, therefore, illegal from the outset, it may at least be said in favor of the Defendant Speer, that he believed in the existence of such a state of emergency and had reason to do so.

The examination of evidence has revealed that the underlying causes which led to the war, so far as they have been exposed here by the Prosecution, were not known to most of the defendants, and least of all to the Defendant Speer. Insofar as the deportation of foreign workers to the Reich constitutes an objectively illegal measure according to international law, it remains to be examined what share of it can be charged to the Defendant Speer. At his interrogation prior to the beginning of the Trial, on 18 October 1945, the Defendant Speer admitted knowing that, at least as far back as September 1942, foreign workers had ceased to come voluntarily to the Reich. He said he had countenanced that because there was no possibility of meeting the labor requirements otherwise. It must be

concluded from this declaration that the defendant was convinced of the necessity for this emergency measure. Subjectively, therefore, he must be credited with believing in the existence of such a state of emergency overriding illegality.

But in the first place, we must examine to what extent the Defendant Speer actually contributed to the dispatch of deportees to Germany. Here we must start from the principle that the Defendant Speer had a purely technical assignment which he described adequately in his evidence, to which reference can be made. In order to carry out this assignment, he stated his labor requirements. The way in which these requirements were met has been described in detail by the witnesses Schieber and Schmelter. Requirements were submitted in terms of totals needed, and it was incumbent upon the Defendant Sauckel to satisfy them. These requirements referred to the total number of workers as a whole, and it was the Defendant Sauckel's task to meet these requirements as far as possible and in accordance with his judgment. He had power to exhaust the entire resources of the home labor potential as well as to recruit foreign labor. The witnesses Schieber, Kehrl, and Schmelter stated, in the course of their interrogations, that the Defendant Speer tried to procure German labor, in the first place, for assignments given to him by the Government.

The testimony of the witness Saur affords evidence that the satisfaction of the labor requirements necessary to enable Speer to accomplish his assignment of increasing armament production was of considerable, though not decisive, importance—Document Book 2, Page 146. According to this testimony, the number of workers in the direct armament industry rose from 4,000,000 to 4,900,000—for the whole of the armament industry—during the defendant's activity as Armament Minister, while the manufacture of basic products for armament increased five and a half to seven times in many departments. It must, therefore, be borne in mind that the increase in armament production which the Defendant Speer was required to produce was achieved, in the first place, not so much through an increase in the number of workers employed as by means of technical and organizational measures. It follows from this again that, for the defendant, the procurement of labor was admitted to be an important, though not decisive, element in the fulfillment of the task assigned to him.

The defendant made the credible statement that he had applied to Sauckel for workers, but had stressed the fact that he wanted German workers first of all. In the defendant's opinion, an increased number of workers could have been found in the economic sector under his control without having recourse to foreign labor to the extent that it was done. The measures taken by the defendant to

prevent the transfer of workers from the West into the Reich have been adequately described by the evidence. In taking those measures—that is, in transferring the production of consumer goods and the manufacture of high priority armament parts, such as, for instance, forged parts, railway equipment, *et cetera,* to the western countries and in installing protected industries there—Speer was actuated by the belief that the conscription of workers from France, as well as from Belgium and Holland, would be halted. The result of his talks with the French Minister Bichelonne, as the defendant explained during his interrogation, was for all practical purposes to end the deportation of workers to Germany. The results have been accurately described by the Plenipotentiary General for the Allocation of Labor at the session of the Central Planning Board held on 1 March 1944—see Page 32 of my document book.

In spite of all the opposition made to this policy—compare Sauckel's letter to Hitler, dated 17 March 1944, Document 3819-PS—Speer persevered in his purpose. The decision adopted at Hitler's conference on 4 January 1944—a report of which was submitted by the Prosecution under Document 556-PS—also reveals that the protected industries, the abolition of which was urged by Sauckel, were to remain out of bounds to Sauckel's labor conscription. Speer wanted to employ the French workers in France, in an effort to transfer the production of consumer goods and products which did not represent armament production to the occupied western territories. He wished to utilize for armament production the German workers released as a result of the closing down of German plants—see Document R-124, Pages 33-34 of the Speer document book. In this manner Speer was able to increase production because German workers could more easily be retrained, as there were no language difficulties and no difficulties regarding food—compare Kehrl, Page 110, the Speer document book. The result of this policy was that workers from the western areas were mainly used in the production of civilian goods, but not in armament production.

On the question of employment of foreign labor in the protected industries, it must also be said the statute is based on two factual circumstances: Deportation for forced labor and forced labor itself.

Forced labor in France was ordered by a decree from the French Government. According to international law there could be no objection to this, unless the view were taken that the French Government was not entitled to take such measures and to issue such decrees. As the Defendant Speer stated, the French economic leadership obtained its independence through the agreement with Bichelonne, naturally with the restrictions imposed by the agreement.

As established by Berck—see Document Book 1, Page 38, Document 1289-PS—co-worker of the Defendant Sauckel, 20 percent went from the protected industries of France to French economy, whereas more than 40 percent went from the consumer goods industry into French hands. It follows that the French armament industry did not manufacture weapons and actual implements of war, for the German authorities would scarcely have left these to the French agencies.

In the session of 20 June 1946 the Tribunal summarized its misgivings as to the manner in which we presented our evidence by stating that questions of suitability were irrelevant. On the other hand the Defense may be said to represent the viewpoint that this speech was only intended to clarify the question of legality. If the French Government were justified in decreeing compulsory labor service, and if plants employing French workers on the basis of this decree or on the basis of voluntary labor contracts were provided with German orders, no legal objection could be raised. The establishment of protected industries, which prevented the withdrawal of workers and their transfer to Germany, and the removal of single branches of production to France, Belgium, and Holland permitted the objective—that is, satisfaction of the requirements of the German economy—to be attained in a manner which was legally unobjectionable. Even though the Defendant Speer did not completely check the transfer of workers, he nevertheless did succeed in decreasing their commitment appreciably. Instead of the policy pursued by other Reich offices of removing foreign workers to the Reich, the defendant aimed at employing the labor needed for his purpose in the workers' homeland—Exhibit Speer-9, Page 24, and Exhibit Speer-11, Page 27 of the Speer document book. To this extent he counteracted the tendency to deport workers from their native country.

In order to prove the assertion that Speer played a decisive part in intensifying deportation for forced labor, the Prosecution refer to Document 556-PS, which is a file memo by Sauckel of a telephone conversation he had with Speer on 5 January 1941. In contrast to this Speer Exhibit-35 has been submitted, the copy of the minutes of the Führer conference of 3 and 5 January 1941, which was the object of the telephone conversation. Even if sharp remarks by Hitler are reproduced here also, the exhibit, nevertheless, does not reveal the tendency which was noted by Sauckel in his file memo. The Defendant Speer was already at that time on bad terms with Sauckel. The order issued to Speer in the minutes of the Führer conference, with reference to the control of the French armament industry, gave him a pretext for the establishment of protected

industries. For all practical purposes the termination of labor commitments from France was thereby achieved—just the opposite, therefore, of what the Prosecution would like to prove. Reference must be made in this connection to Document F-515, Exhibit RF-22. There it is asserted that, owing to the Speer-Bichelonne agreement, labor commitments to Germany from October 1943 onward were one-tenth less—compare Page 41 of my document book.

In weighing the question as to what extent this exonerates the defendant, it is of no importance whether he acted in such a way for reasons of expediency, or with the conviction that the other procedure was illegal. The only thing that matters in this case is the result, which actually put a practical stop to the transfer of laborers to Germany, as is evident from the document quoted, RF-22. It is certainly clear from the Führer's minutes of 19 to 22 June 1944—Exhibit Speer-12, Page 19 of the Speer document book—and from the testimony of Seyss-Inquart, 11 June 1946, that in spite of the loss of industry in the western territories and the intention of other departments to bring the unemployed workers to Germany, Speer succeeded in maintaining his protected industries, and thus the plan to commit more foreign workers to Germany finally collapsed.

In the case of the Defendant Speer, we cannot say that it was his duty to examine how far Sauckel's measures were admissible from the point of view of international law, and this for the following reasons. When he took over his post in the year 1942, the transfer of foreign labor to Reich territory had already been practiced for some time. Speer relied on the assumption that the legal foundations for these measures had been examined before their introduction. It was not his duty, in the eyes of the law, to examine them individually; he could be sure that the offices which handled the allocation of labor commitment had examined the legal basis of their activity. During his years of office, he was repeatedly assured by the Plenipotentiary General for the Allocation of Labor that the transfer of labor to the Reich was carried out strictly within legal limits. He could depend on it that the authorities who were entrusted by the State with the tasks of labor procurement would examine, from the point of view of their legal admissibility, the measures they took in order to carry out these tasks.

The activity of the defendant within the framework of the Government could, if transferred to the sector of civil law, be compared with that of the technical plant manager of a factory, and in this case Sauckel's position would correspond to that of a director of the personnel office. In such a case the technical plant manager's duty is not to examine whether, and to what extent, the employment contracts concluded with the individual workers conform to legal regulations.

He has only to see that the manpower he is given to carry out his tasks is employed in the right place and in the right manner. This cannot be met with the argument that the Defendant Sauckel merely considered himself as the deputy of the Defendant Speer. This would not present a fair picture of the way in which the different tasks had been distributed between the two codefendants by the state leaders. The fact cannot be overlooked that of all the sectors of the economy which sent in their requests to the Defendant Sauckel, those presented by the Defendant Speer were the most important for the conduct of the war and, therefore, had priority over the others. This does not mean, however, that it was Sauckel's duty to satisfy all the demands of the department represented by Speer before all the others. He did not do so, as can be seen from the evidence—in particular from the testimonies of the witnesses Schieber, Document Book 2, Page 114, and Kehrl, Document Book 1, Page 106—and moreover he could not do so since the demands of the other branches of economy, which were all known as "Bedarfsträger," were very often equally urgent, and the labor potential at hand was not sufficient to fulfill all the demands to the same extent. Had Sauckel not been more than a deputy of Speer, a mere tool who had only to carry out the instructions of Speer, the profound differences between the two could never have come into existence.

It has been emphasized by the Prosecution that the appointment of the Defendant Sauckel as Plenipotentiary General for the Allocation of Labor was only made possible through the intervention of the Defendant Speer, and that this gave reason to believe that Sauckel had been more or less a tool of the Defendant Speer, or depended on him to a large extent. This assumption does not correspond with the actual facts. When he took over his office as Armament Minister, the Defendant Speer soon discovered that the supply of labor to plants, which had been carried out until then by the Ministry of Labor, could not equal the demands made on it. Within the field of work of the Ministry of Labor, this activity represented only a small fraction of its over-all functions.

The Defendant Speer declared in the course of his interrogation that the Ministry of Labor was constantly coping with the temperaments of the different Gauleiter in their districts, because it was the ambition of every Gauleiter to do everything within his power to prevent the transfer of workers from his Gau to another. The Ministry of Labor, which was organized on purely bureaucratic lines, did not seem to the Defendant Speer to be equal to its task, and the suggestion was made to the state leadership that a Gauleiter be entrusted with this task. When Speer's suggestion was followed up by the request that a Gauleiter, charged with the

procurement of labor, be put under him, it was not granted by the state leadership because of other existing competencies. The person proposed by Speer was also turned down, and the Defendant Sauckel was appointed instead. So that in Speer's endeavors to create a Plenipotentiary General for the Allocation of Labor, the reasons involved were merely of an organizational nature with the purpose of overcoming the afore-mentioned opposition, which was directed against the activity of the labor procurement office in the Ministry of Labor. But to draw from these facts the conclusion that the Defendant Speer was responsible for all the measures ordered by the Defendant Sauckel would be erroneous.

The fact that the defendant, as a member of the Central Planning Board, participated in sessions at which the problem of the procurement of labor was discussed, cannot be used to support the claim of the Prosecution. The Prosecution attempt to prove from the sessions of the Central Planning Board that the Defendant Speer played a leading part in the procurement of labor from foreign countries. In reply to this the following must be stated. The Prosecution have only submitted the text of the minutes of a session, but not the decisions which were made on the basis of this session. And yet, it is exactly these which are decisive. Since all the Defendant Speer's records, including also the notes on the decisions of the Central Planning Board, were placed by him at the disposal of the Allied authorities, it would have been easy for the Prosecution to present such decisions which would have shown the exact participation of the defendant in the procurement of labor. But such conclusions do not exist and, therefore, the fact that at the conferences of the Central Planning Board questions of labor mobilizations were mentioned should not lead to the conclusion that the Central Planning Board had taken this point over in its sphere of activity.

The decree regarding the establishment of the Central Planning Board is given under Number 42 in Exhibit Speer-7. The scope of the Central Planning Board in labor questions is clearly outlined, and it is stated that the procurement and distribution of labor need not be included in the sphere of competence of the Central Planning Board, as the new office of the Plenipotentiary General for the Allocation of Labor has been specially created for it. It is clear also from the testimony that when the Codefendant Sauckel discussed questions concerning the policy of labor commitment before the Central Planning Board, he underlined sharply his independence of the Central Planning Board, and stressed the fact that when he made his decisions he was responsible only to the Führer in the last instance and was independent of the Central Planning Board. For this I refer to the testimonies of the witness Kehrl and the witness Schieber, Exhibits Speer-36 and 37. This does not mean that no

attempts were made in the Central Planning Board to exert an influence in the sphere of the Plenipotentiary General for the Allocation of Labor. These attempts, however, did not have any results. In principle we must take the stand that the responsibility of the Defendant Speer for the transportation of labor from the occupied territories to the Reich cannot be deduced from his activity within the Central Planning Board.

If the Prosecution charge the defendant with the fact that he knew that a great portion of the workers made available to him by Sauckel had been brought to Germany against their will, and that he used these workers in the industry which was under his control, this conclusion encounters legal criticism. If, and insofar as, the removal of labor to the Reich was a violation of international law, this crime would be limited, at the most to the removal of labor to the Reich. The fact that the persons removed into Reich territory were assigned to work is, legally speaking, a new fact to which the Prosecution apply the concept of slave labor.

In this connection the following should be considered. By reason of the Reich Service Law, and the decree which enforced it, there existed for every German an obligation to contribute his services to the war effort. Through the labor office as the highest instance, the leaders of the State could dispose of the work of every citizen for any purpose they considered appropriate, and they did so.

Foreign workers who were removed to Germany likewise became subject to this regulation. We, on our part, do not deny that the Hague Convention on Land Warfare itself contains no provision which would support the extension of compulsory labor service from German nationals to the inhabitants of the occupied territories. Since the Hague Convention on Land Warfare reflects the influence of a different concept of warfare, it is impossible that it should have taken into consideration conditions produced by economic warfare. Yet, it is not possible to answer in the affirmative the question of whether the Hague Convention on Land Warfare finally and definitely regulates all the powers of an occupation authority. Such an answer is contradicted by the practice of all the nations which participated in this war. But here, too, we can resort to the aforementioned aspect of national emergency to obtain a correct evaluation and appreciation of the case. It should be admitted that the Prosecution are right in that this extension of liability to compulsory labor can be justified from that point of view only.

If we accept the Prosecution's contention that there is no legal justification for the extension of liability to compulsory labor to foreign nationals of occupied territories, we are still obliged to check the extent to which the Defendant Speer has rendered himself guilty in the employment of labor subject to such compulsion. In this

connection we may refer to what was said earlier about deportation. That the Defendant Speer, although he was not responsible for this, still attempted to mitigate the living conditions of these workers, and that he also took steps to correct bad conditions—insofar as these came to his attention—is shown by Exhibits 3, 4, and 5 of the Speer document book and Pages 7, 8, 9 of the Speer document book. Reference must also be made to the testimony of the defendant himself, in direct examination, as well as in cross-examination, where he described his activity in that field.

Justice Jackson, the American chief prosecutor, when placing before the Defendant Speer, during his cross-examination, a series of documents to demonstrate the bad treatment of foreign workers by the firm of Krupp in Essen, himself stated that he did not intend to hold the Defendant Speer responsible for such individual incidents. (Session of 21 June 1946 p. m.) The documents involved were Dr. Jäger's affidavit—Document D-288—discussed by Dr. Servatius, and a letter of the locomotive manufacturing department of the firm of Krupp, dated February 1942, shortly after the Defendant Speer's appointment as Reich Minister. The conditions described therein had caused Speer to intervene with Hitler in March 1942—Exhibit Speer-3, Page 7 of the Speer document book. A further document submitted, Document D-321, describes the conditions under which Russian laborers came to Essen in 1941—that is, before the Defendant Speer took office. Document D-258, Exhibit USA-896, which was submitted during cross-examination, was not produced in order to incriminate the defendant, as stated by Justice Jackson—it may therefore be passed over. Further documents submitted all deal with incidents in the Krupp works. As far as he was able to do so, the defendant explained all of them.

These documents show that abuses of a general nature, for which the firm of Krupp might be held responsible, were caused by air bombardments and the resulting demolition of living quarters. But even if the incidents cited had actually occurred on the premises of that firm—which the Defense is not in a position to verify—these incidents would not supply adequate ground for the assumption that the conditions under which foreign laborers worked in armament industries were the same everywhere. No conclusions may be drawn as to a whole system simply by selecting and investigating one firm. Only evidence showing the general prevalence of such conditions would be relevant.

It is true that the activity of the Defendant Speer would not affect the criminal evaluation of his actions in principle, but it would be of decisive import in establishing the degree in which he participated. When the defendant took office, the practice of employing foreign labor and prisoners of war was already in

existence. Thus he cannot be considered as the originator, which fact must also be taken into consideration when passing judgment; for it appeared impossible to depart from the established practice. The employment of foreign labor in German economy was nothing unusual. Many foreign laborers were employed in agriculture, mining, and surface and underground construction in peacetime as well. During the war many foreign laborers from both East and West had already been brought to Germany before the Defendant Speer took office, and only part of these belonged to the sector under Speer's control.

In order to define the spheres of responsibility of the two defendants, Sauckel and Speer, it will be shown below how the assignment and distribution of workers was handled in the establishments last controlled by the Defendant Speer. Acting as organs of the Speer Ministry, commissions and pools assigned certain production tasks to individual establishments as part of the armament program. The factory then calculated the number of workers needed. This was reported simultaneously to the Armament Command and to the Labor Office, where the labor requirements of all employers in need of workers were recorded. The Armament Command examined all requests received from plants under its jurisdiction and passed them on to the Armament Production Office. Labor requirements reported to the Labor Office were forwarded by them in turn to the Gau labor offices. Armament Inspection Offices collected the requests and forwarded them to the Speer Ministry, labor allocation division. The Gau labor offices directed applications which they received to the Plenipotentiary General for the Allocation of Labor.

It must be noted in this connection that in 1942 the Speer Ministry controlled only construction work and ground forces armament. Navy and air armament made their requests for labor independently. In the spring of 1943 Navy armament was assigned to the Speer Ministry, and, from that time on, labor requisitions for this purpose were handled through the labor allocation division. In the fall of 1943 the rest of production was added, while aircraft armament continued to handle its requisitions independently through the Plenipotentiary General for the Allocation of Labor until August 1944.

An account of these details is indispensable to disprove the Prosecution's assumption that Speer was the main beneficiary of Sauckel's mobilization of labor. The fact that along with the Speer Ministry there existed essential labor employing agencies of equal importance as, for instance, the Armed Forces Administration, the Transport System, and so forth, need be mentioned only incidentally, but has also been confirmed by the testimony of witnesses.

The Plenipotentiary General for the Allocation of Labor distributed the labor at his disposal among the various labor employing agencies and assigned the required labor to the Gau labor office which in turn referred them to the local labor offices where workers were assigned to individual establishments on the strength of applications previously examined by the Armament Office. An exception to this cumbersome procedure was made by the introduction of the so-called "red-slip process" which was used in the case of exceptionally urgent production assignments—I refer to Page 122 of the document book. A certain number of red slips were issued monthly by the Plenipotentiary General for the Allocation of Labor and placed at the disposal of the Armaments Ministry for distribution by the latter to the plants under its supervision through the industry's administrative agencies. The plant itself then presented these red slips to the Labor Office, which had to satisfy these red-slip requests for workers regardless of the requirements of other consuming agencies. Not until this had been done could allocations be made to other establishments. General requests for labor were involved in all instances. The allocation was exclusively in the hands of labor authorities directed by the Defendant Sauckel, so that neither the individual factory nor the offices of the Defendant Speer, nor the Defendant Speer himself, had any influence on the distribution. The question of whether local, foreign, or prisoner-of-war labor should be used to satisfy requisitions was left for the labor authorities to decide—document book, Pages 8 and 9.

In concluding the presentation of evidence, the Prosecution submitted the decree of 1 December 1942, Document 4006-PS, issued jointly by Speer and Sauckel. The Prosecution contend that this document, and the decree of 22 June 1944 submitted at the same time, furnish a basis for appraisal of the power ration between Speer and Sauckel. Some comment on this is, therefore, appropriate.

The decree of 1 December 1942 leaves no doubt that the Plenipotentiary General for the Allocation of Labor was authorized to examine requests for labor submitted to him which came from the armaments industry. Thus, when a factory asked for additional laborers in order to carry out the production job assigned to it, the Plenipotentiary General for the Allocation of Labor reserved for himself the right to examine the requests submitted with a view to determine whether they were necessary. The intention was to make each factory practice the greatest possible economy in the use of labor within its own precincts.

Another purpose of these commissions was to determine the extent to which an establishment might be able to release its own labor for work in other plants, without prejudice to the task assigned to it. It was the task of the Ministry for Armament and

War Production, and of the agencies subordinate to it, to determine the sequence of priority of requests for labor received by establishments under its jurisdiction. They also had to determine which of the plants was in a position to release workers for other plants manufacturing similar products for similar Armed Forces requirements. To give an example: The supply program of a plant manufacturing component parts for vehicles was modified, then it was left to the Armament Command to decide that the labor power thus set free should be assigned to another factory in the same line of production.

In general, the allotment of labor remained in the hands of the Plenipotentiary General for the Allocation of Labor. The agencies of Speer's Ministry were merely concerned with directing the labor already available in this economic branch which had been procured and assigned to these establishments by the Plenipotentiary General for the Allocation of Labor. The procurement of labor from other plants remained in the hands of the Plenipotentiary General for the Allocation of Labor, and the Plenipotentiary General for the Allocation of Labor participated authoritatively in the examination of the question as to what extent plants could release labor in order to make it available to others—the so-called combing-out action.

The authority of the Plenipotentiary General for the Allocation of Labor was, therefore, not limited to any considerable extent through this mutual agreement between him and the Reich Minister for Armament and War Production. His task, now as before, was merely to procure labor for the plants. He was even given a considerable amount of authority in labor questions—to look over the armament plants under the control of the Defendant Speer and to examine if, and to what extent, these plants could make available labor for other plants.

The decree of 22 June 1944 ordained that labor which was already available was to be used in accordance with the directives of the central authorities or according to the orders of the Chairman of the Armament Commission. It must also be noted in this respect that it was not a matter of using new labor, which was unskilled in armament work, and which was still procured through the Plenipotentiary General for the Allocation of Labor, but solely of so-called transfer actions from one armament plant to another. Therefore, the Sauckel agencies, in accordance with this decree, could no longer check the demands for labor made by the plants which were controlled by the Speer Ministry, if the Chairman of the Armament Commission had recognized these demands. This decree brought about a change in the basic distribution of authority, according to which the Plenipotentiary General for the Allocation

of Labor had to procure the required labor and to handle the whole allocation of labor. If the agencies of the Plenipotentiary General for the Allocation of Labor allocated labor in response to demands which had been checked, then it was left to their judgment as to what type of labor, whether native or foreign, *et cetera,* was to be furnished. The authority of the agencies of the Minister for Armament and War Production in questions of the commitment of labor was limited to a large extent to the execution of so-called transfer actions, that is, the assignment of labor from one armament plant to another.

It would be wrong to try to conclude from these decrees that there was a considerable limitation of the authority of the Plenipotentiary General for the Allocation of Labor and a fundamental expansion of authority on the side of Speer. It would be just as wrong to conclude from this that the influence of the Ministry for Armament and War Production had been increased over other authorities of the Plenipotentiary General for the Allocation of Labor.

In order apparently to characterize the relationship between Speer and Sauckel, the Prosecution have finally submitted a file note by General Thomas, the Director of the War Economy and Armament Division in the OKW, regarding a discussion which took place on 24 March 1942 between the Defendant Speer on the one hand, himself, and the directors of the armament offices of the three branches of the Armed Forces on the other hand, in which Thomas states that the Führer considered Speer as his main authority and his agent for all economic spheres. This note can only be understood in connection with the report of the account given by General Thomas of his activity as Director of the War Economy and Armament Office, and which has been presented to the Tribunal in excerpt form under Document 2353-PS.

Prior to Speer's appointment as Minister for Armament and War Production, Thomas had to try to bring about an expansion of the position of Plenipotentiary for Economy as it had been provided in the Reich Defense Law, so that it should become an office which would control the whole war economy. When now the armament economy was confronted with heavy demands in connection with the first winter campaign in Russia, and the losses which had been sustained there, and Hitler, after the death of Dr. Todt, appointed Speer to be his successor in the Ministry for Armaments and Munitions, Thomas thought he would find in Speer a personality who would receive the authority which he had striven to obtain for the Plenipotentiary for Economy.

This, however, did not occur. As has been shown from the evidence, Speer was entrusted only with the equipment of the Army

and construction tasks. The control of the new office of the Plenipotentiary General for the Allocation of Labor by his Ministry, for which the Defendant Speer was striving, was not sanctioned by Hitler. Speer's rights as Minister for Armament and War Production are stated in the decree. The expectations which General Thomas held on the whole with regard to the appointment of Speer, were therefore not fulfilled in any way. Speer only received increased authority when in the year 1943 he took over industrial production from the Ministry of Economy. But even then he was still far from having the same field of tasks as General Thomas had expected for him. Relying on his expectations, General Thomas thought that he had found in the person of Speer the man appointed by Hitler who would settle matters on all economic questions. In the file note of General Thomas, which confines itself merely to generalities, it is a matter of an expression of opinion which was not justified by the actual state of affairs. It offers no grounds on which to answer the question as to how we must distribute responsibility for the policy of the labor commitment to which the Prosecution object.

In summarizing, it must be stated to this count of the Indictment: Speer is not responsible for the means employed for the procurement of foreign labor, nor for its removal to Germany. He is at the most responsible for the utilization of part of this labor in Germany.

As a further count of the Indictment, it has been stated that the defendant employed prisoners of war in the economic sector which was under his direction, and that he thereby violated Article 32 of the Geneva Convention of July 1929, regarding the treatment of prisoners of war. The defendant never denied that he employed prisoners of war in plants under his control. This, however, cannot be regarded simply as a violation of Articles 31 and 32 of the previously mentioned agreement.

The expression "armament economy" and/or "armament plant" has not the same meaning as "plant" or "economy," the task of which is the manufacture of arms and direct war requirements.

The term "armament plant" can only be understood from its development. When, at the beginning of rearmament, there began to be a limitation of raw materials, plants which were working for rearmament were given preference in obtaining raw materials. These plants were controlled by the armament inspections, which were set up by the Armed Forces and called "armament plants." In addition to all other plants, those were included in it which served the manufacture of iron, steel, and metals, as well as those plants which manufactured machine boilers, vehicles, and appliances; also the entire manufacture of raw steel in the first stages

of preparation—foundries, rolling works, forges—as well as the whole remaining subsidiary supply industry, for example, electrotechnical plants, plants which produced optical instruments, plants which manufactured ball bearings, cogwheels, *et cetera.* This is shown by the testimony of the witness Schieber—Question 9, document book, Page 114.

Only 30-35 percent, roughly, of the whole iron production was used for the production of armaments to the extent previously described, and 60 percent for the maintenance of production for other consumers—Reich railroads, the construction of merchant vessels, agricultural machines, export goods, appliances for the chemical industry, *et cetera.* We refer to the testimony of the witness Kehrl, which has been submitted under Exhibit Speer-36, and particularly to his answer to Question 5.

Since the iron quota assigned to the armament industry also includes the production of raw steel and the different stages of manufacture, it can be safely presumed that of all the plants which were combined in the armament inspections, only approximately 20-30 percent manufactured armament products in the sense implied in the Geneva Convention. These details had to be examined in order to gain an idea as to what extent Article 31 of the Geneva Convention could be violated by the employment of prisoners of war.

The Prosecution have presented an affidavit of the American economic statistician Deuss under Document 2520-PS, in order to prove thereby how many prisoners of war and foreign workers were employed in the armament industry. This compilation, which is principally supported by figures taken from the documents in the possession of the Defendant Speer, does not, however, state in which branches of the armament industry the individual prisoners of war worked. A large enterprise which falls under one of the above-listed categories and as a result thereof was considered an armament plant in its entirety, needs only to manufacture a fraction or perhaps no weapons or equipment at all which stand in direct relationship to war activities. If prisoners of war are employed in it, then their occupation does not represent a violation of Article 31 of the Geneva Prisoners of War Convention. Such a plant, however, appears in its entirety in Deuss' affidavit. The affidavit thereby loses its value as evidence as to what extent Article 31 of the Geneva Convention was violated. Thus we have no proof of whether, and to what extent, Article 31 was violated by the employment of prisoners of war in the armament industry.

The French Prosecution have taken the point of view that the employment of French civilian workers who had been released from confinement as prisoners of war, and who were employed in the

armament industry, was also to be considered a violation of Article 31. This is not applicable. From the time of their release the former prisoners of war were free people who were unlimited in their freedom of movement, and who were restricted only by the obligations embodied in their labor contracts. In addition to this, no French prisoner of war could be forced to agree to his release under the obligation of putting himself as a worker at the disposal of German industry. It was his own free decision if he preferred to accept his release as a prisoner of war under these conditions. If he did so, from this moment onward he was no longer a soldier, and was no longer subject to military discipline; he received his working wages like every free worker, and was not subjected to any camp discipline or any other restrictions of the same nature. To those prisoners of war who preferred to agree to their release under these circumstances, the advantages apparently appeared far greater than the protection which they enjoyed as prisoners of war. If they did so, then their occupation, even in work which in itself is prohibited for prisoners of war in accordance with Article 31, cannot be considered a violation of this article.

The employment of prisoners of war in the industry of the country which is holding them prisoner is not prohibited by the Geneva Prisoners of War Convention. Only that work is prohibited which is directly connected with military operations—for example, the use of prisoners of war for fortification works for a combat unit. The Defendant Speer cannot be accused of anything of that kind. It is also prohibited for them to manufacture and transport weapons of all kinds, as well as to transport war material for combat units. In the armament economy under the control of the Defendant Speer, the only thing which could be considered as a violation of the afore-mentioned rule is the manufacture of weapons and munitions of all kinds. Such a violation, however, has so far not been proved by the Prosecution at all.

It must furthermore be examined how the assignment of prisoners of war to plants took place. According to the testimony of the Defendant Sauckel, this as a matter of principle was done by the war economy officers with the military district commanders, who submitted the number of prisoners of war available for work to the Gau labor office; and the transfer of the prisoners of war to the plants then took place in the same manner as with ordinary labor. The only difference was that the camp officers—the prisoners of war were billeted in so-called enlisted men's camps (Stammlager)—were responsible for seeing that the directives issued by the OKW for the employment and treatment of prisoners of war were complied with. It was the responsibility of these camp officers to see that in the employment of prisoners of war any violation of Article 31

of the Prisoners of War Convention was made impossible. The commitment officers (Einsatzoffiziere) appointed by the camp commanders had constantly to control and examine the working conditions and the nature of the occupation of prisoners of war in armament plants, and they had to watch to see that no prohibited work was imposed on the prisoners of war. The Defendant Keitel has given an exact description of the manner in which the control of prisoners of war in the home area was carried out. Documents have also been submitted which give information about the treatment of prisoners of war.

The prisoners of war who were confined in assembly camps were constantly being examined by camp commitment officers to see that their employment was in accordance with Articles 31 and 32 of the Geneva Prisoners of War Convention. As far as French prisoners of war were concerned, a special authority existed for them in the person of Ambassador Scapini, who had to forward to the OKW any complaints which were made against the use of prisoners of war for labor in a way which violated international law. Complaints of this kind by Ambassador Scapini were immediately investigated, and if they were found to be justified, improvements were made. It is, of course, possible that mistakes sometimes occurred in view of the vast organization necessitated by the large number of French prisoners of war. Measures for the correction of mistakes of this kind are, after all, provided by the Geneva Prisoners of War Convention itself in its regulations. These regulations were also effective in the last war. The representatives of the protecting powers intervened against bad conditions brought to their attention through complaints, and they also demanded and achieved their abolition. If such mistakes were recognized and reported, they were then immediately remedied. It would be wrong to try to conclude from individual occurrences that there was a premeditated plan. The protection which prisoners of war found through the labor commitment officers even laid Defendant Speer open to criticism by individual plant directors as being too extensive.

In this respect, as far as the Defendant Speer's position in law is concerned, we must first examine whether the employment of prisoners of war in the armament industry is to be fundamentally regarded as a violation of the rules of international law. After the previous statements as to the character of the plants which were combined in the armament industry, this must be answered in the negative. Only insofar as prisoners of war were actually employed in the production of arms and in the production of urgent war materials could there be any mention of a violation of Article 31. That this regulation may have been violated in individual cases we will not deny. If, for example, as the photographs submitted by the

American Prosecution show, prisoners of war were used near the front lines to unload munition trains, then this undoubtedly represents a violation of the regulations of Article 31. The Defendant Speer, however, cannot be accused of such incidents, as they do not fall within his competence. To use the fact of the employment of prisoners of war in the armament industry to conclude a violation on a large scale of the regulations of the Geneva Prisoners of War Convention is not justified.

THE PRESIDENT: The Tribunal will adjourn.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

M. JEAN JACQUES LANOIRE (Assistant Prosecutor for the French Republic): Mr. President, I would request the authorization of the Tribunal to make a very short statement in the name of the French Prosecution. Even though it is not the custom that the Prosecution should intervene in the course of the discussion, the counsel for Speer gave a few opinions which it seems to me I must go into without waiting for my turn, and also request the Tribunal to reject them.

THE PRESIDENT: The Tribunal does not think it is appropriate that the speeches of the defendant's counsel should be interrupted by counsel for the Prosecution. Counsel for the Prosecution are going to speak afterward, and they will then have a full opportunity of answering the speeches that have been made on behalf of the defendants.

M. LANOIRE: Certainly, Mr. President.

THE PRESIDENT: Dr. Flächsner, if you will wait one moment, I have an announcement to make. The Tribunal refers to its order of 23 February 1946, Paragraph 8 of that order, which is on the subject of the statements which the defendants may make, under Article 24 of the Charter.

In view of the full statements already made by the defendants and their counsel, the Tribunal assumes that if it is the defendants' desire to make any further statements, it will be only to deal with matters previously omitted. The defendants will not be permitted to make further speeches or to repeat what has already been said by themselves or their counsel but will be limited to short statements of a few minutes each to cover matters not already covered by their testimony or the arguments of counsel.

That is all.

DR. FLÄCHSNER: Mr. President, Your Honors, I now continue my speech. A further charge of the Prosecution refers to the violation of Article 32 of the Geneva Prisoner of War Agreement, according to which prisoners of war were employed in unhealthy work, insofar as prisoners of war had been employed in mines. For this reference is made to the minutes of a meeting of the Central Planning Board where the employment of Russian prisoners of war in mines is discussed. The employment of prisoners of war in mines is not to be considered as forbidden in itself, and it has been practiced in all industrial nations. The employment of Russian prisoners of war in mines is, therefore, not to be objected to, insofar as the prisoners concerned were in a

physical condition that enabled them to do heavy mining work. It has not been established and proved by the Prosecution that these prisoners of war were not physically fit for the work given them. From the fact that the employment of prisoners of war in mines was discussed and approved by the Central Planning Board, it cannot be concluded that Article 32 of the Prisoner of War Agreement was violated. The treatment of prisoners of war has to be examined legally from various points of view. The German Government have taken the point of view that Soviet prisoners of war should be treated on a different legal basis from the subjects of the Western States, who were all parties to the treaty of the Geneva Prisoner of War Convention of 1929, whereas the Soviet Union did not sign this agreement. The Soviet Prosecution have presented Document EC-338, USSR-356, an investigation of the Foreign Counter-Intelligence Office (Amt Ausland Abwehr) in the High Command of the Armed Forces concerning the legality of the regulations issued on the treatment of Soviet prisoners of war, according to international law, and leveled sharp criticism at the latter. The essential point is that in this report the view is expressed that, as a matter of fundamental principle, Soviet prisoners of war cannot be treated according to the rules of the Geneva Prisoner of War Agreement because the Soviet Union did not participate in this. Moreover, this report refers to the decree of the Soviet Union of 1 July 1941 concerning the treatment of prisoners of war regarding which the opinion of the Counter-Intelligence of the Armed Forces confirms that on essential points it agrees with the rules of the Geneva Prisoner of War Agreement. It is, however, characteristic that in this decree it is ordered that noncommissioned officers and enlisted men taken as prisoners of war may be put to work for industry and agriculture inside the camp or outside and that the only restriction is that the use of prisoner-of-war labor is forbidden: (a) in the combat area, (b) for personal needs of the administration as well as for the needs of other prisoners of war, so-called orderly service (see Pages 12-13 of the Speer document book, Document Number EC-338).

An order restricting the use of prisoner-of-war labor according to Articles 31 and 32 of the Geneva Prisoner of War Agreement is not to be understood from the above-mentioned command. It now remains to investigate whether the stipulations of Articles 31 and 32 of the Geneva Prisoner of War Agreement flow from general rules of international law, which should be observed even if there were no special ruling by treaty, such as the Geneva Prisoner of War Agreement represents. This cannot generally be affirmed. The above-mentioned treaty regulations cannot be regarded as the prescription by treaty of a generally valid legal

concept, if so important a member of the group observing international law as the Soviet Union does not accept a ruling of this sort.

Proceeding from this idea, the employment of Soviet prisoners of war in work forbidden by Article 31 of the Prisoner of War Agreement is not to be objected to. The Italian military persons interned in Germany after Italy's fall do not come under the regulations of the Geneva Prisoner of War Agreement since no state of war existed between Germany and Italy. Moreover, these military internees did not come under the restrictions of Article 31 in their employment as manpower. It must, however, be pointed out that these military internees are comprised in the enumeration of Mr. Deuss of prisoners of war occupied in the armament industry.

In conclusion, the following is to be said on this point:

The procurement of prisoners of war for the factories was effected exclusively through the offices of the Plenipotentiary General for the Allocation of Labor. The control of the proper allocation in accordance with the Prisoner of War Agreement depended on the labor commitment officer of the Stalag, who in return was himself finally responsible to the general for prisoner-of-war affairs at the Army High Command. It was not possible for the Defendant Speer to have any influence on the distribution of prisoners of war and their occupation. The Prosecution have not been in a position to bring any proof from which the participation of the Defendant Speer in unlawful employment of prisoners of war might be deduced. These assertions of the Prosecution have remained unproved.

The Prosecution have now further brought against the defendant the charge that the Todt Organization, at the head of which Speer was placed in February 1942 after Dr. Todt's death, had used native workers to build fortifications in the French coastal areas. As far as the Todt Organization is concerned, it is a purely civilian institution of the general construction inspector for road maintenance. It worked on a private economic basis, that is, it allocated the construction work that it intended to carry out to private firms, also to foreign firms, which were established in the respective countries; and it merely supervised the execution of the constructions. The private firms could undertake the procurement of the necessary materials and labor themselves. For the very reason that native construction enterprises were used, it was possible to eliminate the difficulties which otherwise would have opposed themselves to the execution of the work. The workyards of the Todt Organization enjoyed a certain favor with the natives because the workmen had the assurance that they could not be

compelled to go to Germany to work in industry there because these places of construction of the Organization Todt were considered as urgently important. The workers went voluntarily to the firms which were active for the Todt Organization to obtain this security. The example, quoted by the Defendant Speer during cross-examination, of 50,000 Todt Organization workers who were once taken from France to Germany to repair damages caused to two west German valley dams by air attacks, made such a bad impression on the workers employed in other Todt Organization construction sites that there was nothing else left to be done but to send these 50,000 workers back to France. In the meantime, many workmen of the Todt Organization construction sites in France disappeared, because they feared they would be taken to Germany sooner or later against their will, while up to then they had regarded employment in enterprises which worked for the Todt Organization as insurance against an eventual transfer to Germany. Only the return of the above-mentioned 50,000 workers to France, which was brought about by the Defendant Speer when these unfavorable consequences developed, restored the hitherto existing state of confidence.

Here, too, the fact should be emphasized that, as a result of the event described, the Todt Organization workers were free to go where they wished in France—in any case, that no coercion was used against them. The consequence of this was that when the protected plants (Sperrbetriebe) were established in France, all enterprises working for the Todt Organization were declared protected plants and therefore could not be otherwise employed. This instance shows that the view of the Prosecution that the workers of the Todt Organization were forced into the Todt Organization plants against their will is a wrong interpretation.

As it is established that the French Government agreed to the use of French workers in construction sites under administration of the Todt Organization as well as in any other armament industries in Germany and the occupied territories, illegality is excluded. It should not be left unmentioned here that, after the conclusion of the Armistice Agreement with France, the latter took no part in military hostilities. The Armistice Treaty certainly did not mean an agreement for a truce but, *de facto,* a final end to hostilities and was to serve as a preparation for the conclusion of peace. It was no longer a period of war, but it was not a definite return to peacetime conditions regulated by treaty. A resumption of hostilities was, however, according to both partners to the Armistice, completely out of the question. The Armistice was exclusively to regulate the situation until the definite conclusion of peace. Stipulations of the Hague Convention for Land Warfare

as well as of the Prisoner of War Agreement forbidding services which run counter to loyalty toward one's own country still at war do not apply because the country is no longer at war. After a general armistice the production of arms and munitions can no longer be directed against the ally which has retired from hostilities but only against other allies still in the field. The aforementioned principle of respecting the loyalty to one's own country can no longer be applied in such cases.

It must, moreover, be pointed out that the Todt Organization was in no way a paramilitary organization as has been falsely asserted. Apparently this false assumption has been strengthened by the fact that the German members of the administration of the Todt Organization abroad wore a uniform. These people were considered as Armed Forces followers; but on the other hand the labor engaged by the firms and the construction workers of the firms, as well as the technical personnel, stood in no such relation. The charge cannot be made, therefore, that these native workers were indirectly incorporated into an Armed Forces' organization.

A further charge against the Defendant Speer consists in the fact that prisoners from concentration camps were employed in the economic sector controlled by him. The defendant admitted this. Criminal responsibility because of this fact does not, however, stand the test of a legal verification. The employment of convicts for work of an economic nature has always been a practice in Germany. It could be carried out in various ways, partly by employment within the convict prison itself, partly outside. Owing to the shortage of labor due to the intensification of the economic war, it was necessary to draw upon the labor available in the concentration camps.

The Prosecution have submitted documents from which can be seen how much trouble was taken by the offices subordinate to the Reich Minister Himmler to use the reserves of labor contained in the concentration camps for the construction of their own SS plants; and the Defendant Speer has supplied information during his hearing before the Court on 20-21 June regarding Himmler's efforts to build up a separate armament industry of his own, subordinate to him only, which would render any control over the production of arms in these intended SS plants impossible, so that the SS could have provided themselves with weapons without supervision by the Army or any other offices.

The Defendant Speer successfully fought this. It was agreed that Himmler would release a part of the inmates of the concentration camps to be employed in the armament industry. The inmates of the concentration camps would thus improve their

situation, since they obtained the higher food rations provided for those on long shifts or doing heavy work, as has been attested by witness Riecke; moreover, they left the large concentration camps and were no longer under SS control during working hours, but in the plants they were subject to the control of foremen and skilled workmen appointed by the plants themselves.

It is true that to avoid transportation and marching difficulties special camps were erected near the plants or working places where they were employed, and these were not accessible to the supervision of the plant managers nor to the control of the offices of the Defendant Speer but were exclusively under the direction of the offices in charge of the administration of the concentration camps. For the poor conditions prevailing in such camps neither the plant manager nor the offices of the Defendant Speer can be held responsible. In general, as attested by the letter of the department chief Schieber of 7 May 1944 to the Defendant Speer (Speer Document Book 2, Page 88), the inmates preferred work in such plants rather than be assigned by the administration of the concentration camp itself. And Schieber quite clearly states in his letter that for these reasons the employment of concentration camp inmates should be extended in order to improve their lot. But he further states that the number of concentration camp inmates employed in the armament industry amounted to 36,000 and that this figure was decreasing. The defendant's assertion, however, at his interrogation that the total number of concentration camp workers employed in the armament industry amounted to 1 percent of the total number of workmen employed in the whole armament industry has been calculated too high. Of 4.9 million workmen engaged in the final processing of armaments, the figure of 36,000 represents only 7 per thousand. The number of concentration camp inmates employed in the armament industry represents a very small part of the total number employed in the final processing of armaments, that is, of the total number employed in the plants manufacturing finished products.

These figures show how misleading the assumption of the Prosecution is, that the employment of such prisoners in the armament industry had resulted in an increased demand for such labor and that this increased demand was satisfied by sending to concentration camps people who under normal conditions would never have been sent there. The opinion that the employment of prisoners from concentration camps in the armament industry led to an increase in the number of concentration camp inmates is disproved by Schieber's letter already mentioned (Exhibit Number Speer-6, Page 88) and by his testimony, also submitted as Exhibit Number Speer-37. According to this the employment

of concentration camp inmates in the armament industry occurred for the first time in the autumn of 1943, and the number of prisoners employed there reached its peak with the maximum figures of 36,000 in March 1944 and from that time on actually decreased. Therefore the conclusions of the Prosecution in no way bear examination. Nor has proof been brought forward that Speer had attempted to have people sent to concentration camps.

At his interrogation the defendant admitted that everywhere in Germany people were afraid of being sent to a concentration camp. The population's dread of concentration camps was quite justified, for it depended only on the judgment of the police authorities under Himmler whether a person was sent to a concentration camp or not; further, because there was no legal authority to check the charges resulting in a transfer to a concentration camp; and finally—and this is the main reason—because it was left entirely to the discretion of the concentration camp authorities to decide for how long one was to be sent to a concentration camp.

The Prosecution have further asserted that Speer went on having concentration camp inmates work in the armament industry after he had obtained knowledge of conditions prevailing in the Mauthausen Camp after a visit he had made there. That this was not the case is proved by the evidence of the defendant on this point. As it was only a hurried visit for the purpose of instructing the camp administration to desist from tasks which served purely peacetime purposes but rather place labor at the disposal of the armament industry, the Defendant Speer could only obtain a superficial impression of the living conditions in the camp. On this point his evidence may be referred to.

Moreover, through witnesses for the Prosecution, detailed reference has been made to the fact that during such visits to concentration camps by important personalities, the camps were seen from the best side only, and any signs of atrocities, *et cetera,* were carefully removed so that the visitor received no unfavorable impressions.

In connection with this question we will deal with the further charge of the Prosecution, which asserts that Speer had approved using Hungarian Jews for the construction of the bombproof aircraft factories ordered by Hitler. In this respect reference must be made to the evidence of the witness Milch and that of the witness Frank. Milch stated that Speer, who was ill at the time, strongly opposed these constructions but that Hitler, who demanded that the work be undertaken, commissioned Dorsch, the leader of the Todt Organization, to carry them out. So that the controversy between Hitler and Speer should not become known to

outsiders, Dorsch officially remained subordinate to Speer; but in this matter he had to deal directly with Hitler alone and was immediately subordinate to him. In his evidence Milch further stated that these construction plans were never actually carried out. I have submitted Hitler's order to Speer of 21 April 1944 as Exhibit Number Speer-34, Page 52, in my document book (Speer Document Book 1). This order clearly shows that Hitler designated Dorsch as being directly responsible to him, since the appointment of Speer, who was given the duty of incorporating these tasks into the building plans under him, was of a purely formal nature. The evidence given by Field Marshal Milch is thus confirmed by this letter.

To support the opinion of the Prosecution that the Defendant Speer had helped send people to concentration camps, a statement by Speer at a sitting of the Central Planning Board of 30 October 1942 on the question of shirkers is quoted. In this connection we must look at the evidence of the Defendant Speer in the witness box where he declared that upon this statement no steps to stop this evil were taken with the Plenipotentiary General for the Allocation of Labor either by the Central Planning Board or by himself. In reality, nothing was done about it. It was only in November 1943 that Sauckel issued a decree against shirkers. The term "shirker" is applied to those workers who evade their obligations by simulating illness or who stay away from work under flimsy pretexts or for no reason at all.

It may incidentally be mentioned here that economic warfare did not neglect even this question. Efforts were made in every imaginable way to dampen the worker's spirit. By dropping leaflets and through other channels of information, the workers were told how to feign sickness and slow up their work, *et cetera.* At first this propaganda succeeded only in isolated cases. Since such isolated cases had an unfavorable influence on the working discipline of the personnel as a whole, the Defendant Speer discussed the possibility of police intervention. Speer did not, however, take steps of any kind which would have led to practical action on the part of the Police. It was not until a year later that a decree was issued by the Plenipotentiary General for the Allocation of Labor, first making it an obligation for the employer to use disciplinary penalties. In particularly grave cases, the trustees for production could ask for court punishment. Based on this decree sentences could be pronounced providing for transfer to a workers' training camp for a term of 56 days. Only in exceptionally grave cases of infractions of the working law did the decree of the Plenipotentiary General for the Allocation of Labor provide for transfer to a concentration camp.

It must be mentioned here that this decree was applicable both to native and foreign workers, for in no case were native workers to be treated differently. In the cross-examination of Defendant Sauckel, the French Prosecution produced the document about a meeting of Sauckel's labor authorities at the Wartburg. At this meeting Dr. Sturm, the specialist on questions of labor law with the Plenipotentiary General for the Allocation of Labor, gave a lecture on the punishment of workmen; and it was thereby established that only an infinitesimal percentage of workers had to be sentenced to penal punishment.

But from this it is again evident that the Prosecution have brought forward no proof for the assertion that, as a consequence of Sauckel's decree concerning shirkers, the concentration camps were filled; so that conclusive proof is lacking that Sauckel or the Defendant Speer contributed by any measures they took to the filling of concentration camps.

In his statement before the Central Planning Board of 22 May 1944 (Page 49 in my document book, Speer Document Book 1) Speer pointed out that the escaped prisoners of war who were apprehended by the Police had to be taken back to their work. From this remark we see the basic attitude of the Defendant Speer, who did not want to see the escaped prisoners of war thrown into concentration camps but demanded that they be immediately incorporated into industry. So far the Prosecution has not been able to bring forward any proof that will stand the test for the assertion that Speer had the concentration camps filled in order to obtain labor from them.

Mr. President, perhaps now I may go into the question which you asked me at the beginning of my plea as to how I interpret Paragraph 6(a) of the Charter in regard to the Defendant Speer, especially in regard to the terminology: "The waging of a war of aggression." I should like to say the following: The Charter, under 6(a), cites, among other punishable actions, the waging of a war of aggression. As for the definition of a war of aggression, I need say nothing here. Professor Jahrreiss has already done that in detail. Here it is only the interpretation of the term "the waging of a war of aggression" that is in question. My point of view is that a war of aggression can be waged only by the person who has supreme command. All others are only led, even if their participation may mean a considerable contribution to the war.

In the case of the Defendant Speer, therefore, the waging of a war of aggression cannot be applied. I should like to point out the following as well: In a session on about 28 February or 1 March, one of the judges told Justice Jackson that the Prosecution had

represented the point of view that the charge of a war of aggression was concluded with its outbreak. I can only share this opinion.

During the hearing of evidence I had ample opportunity to state the activities of the Defendant Speer during the last phases of the war from June 1944. I can, therefore, confine myself now to proving in regard to this detailed chronological description that the entire testimony of Speer is covered almost completely by testimonies of other witnesses and by documents. The written statements of witnesses, which I refrained from reading before the Court, run entirely along the same lines, although the witnesses came from different camps and expressed themselves in a completely unbiased manner.

Beginning with June 1944 the Defendant Speer readily reported to Hitler on the situation of his armament production, and he expressly pointed out at the same time that the war would be lost if such decline of production were allowed to continue. This is proved by the memoranda of Speer to Hitler submitted as Exhibits Speer-14, 15, 20, 21, 22, 23, 24. As stated by the witness General Guderian, Chief of the General Staff of the Army, Hitler from the end of January 1945 defined any such information as high treason and subjected it to corresponding punishment. Nevertheless, as it appears also from the statement of General Guderian, Chief of the Army General Staff, Speer stated clearly time and again to Hitler as well as to Guderian his opinion about the prospects of the war.

Hitler had especially forbidden that third persons should be informed about the true situation of the war. Nevertheless, after the severest orders for destruction had been issued by Hitler, Speer informed the Gauleiter and the commanders of various army groups that the war was lost and thus helped prevent, in part at least, Hitler's policy of destruction. This is evident from the testimonies of witnesses Hupfauer, Kempf, and Von Poser.

Hitler declared to Speer on 29 March 1945 that the latter would have to take the consequences customary in such cases, if he continued to declare that the war was lost. This conversation is contained in the testimony of the witness Kempf. In spite of it Speer traveled 2 days later to Seyss-Inquart—on 1 April 1945—in order to explain to him, too, that the war was lost. The witness Seyss-Inquart and the witness Schwebel in the interrogations of 11 June 1946 and 14 June 1946 stated that this conversation with Speer of 1 April 1945 occasioned the conferences of Seyss-Inquart with the Chief of the General Staff of General Eisenhower, General Smith. This led finally to the handing over of undestroyed Holland to the Allies.

On 24 April 1945 Speer flew once again to Berlin, which was already besieged, in order to persuade Hitler that this senseless battle should be given up, as is evident from the testimony of the witness Poser. In his last will Hitler dismissed Speer on 29 April 1945. The American Chief Prosecutor, Chief Justice Jackson, in his cross-examination was, therefore, obliged to concur with the Defendant Speer that he evidently was the only man who told Hitler the whole truth.

The representatives of the Prosecution have produced no evidence that destructions of industries took place in Poland, the Balkans, Czechoslovakia, France, Belgium, Holland during the German retreat. This is to be credited to the Defendant Speer above all who, partly even by falsely interpreting existing orders, prevented the destruction of the industries of these countries as ordered by Hitler. That Speer was convinced as early as the summer of 1944 that this destruction should be prevented in the general European interest is evident from the testimony of the witness Von Poser. It would have been easy by executing the orders to cripple completely the highly developed industries of Central Europe and of the occupied western European countries for 2-3 years and thus destroy the entire industrial production and civilized life of these peoples and even make their own reconstruction impossible for years.

The witness Seyss-Inquart has stated in his interrogation on 11 June 1946 that the calculated destruction of only 14 points in Holland would have absolutely destroyed the basis of existence of this country. The destruction, for instance, of all power plants in these countries would have produced an effect similar to the destruction in 1941 by the Soviets of two or three power plants in the Donets territory. In spite of all efforts it was not until the summer of 1943 that some scanty production could start again there. Similar and still more far-reaching consequences had to be expected from carrying out Hitler's orders on the European continent.

After the success of the invasion of these occupied territories Speer gave the authorization to refrain from any destructions, as is confirmed by the witnesses Von Poser, Kempf, Schieber, Kehrl, Rohland, Seyss-Inquart, and Hirschfeld. Immediately after the appointment of the Codefendant Dönitz as successor to Hitler, he submitted to him orders prohibiting any destruction in the still occupied territories of Norway, Czechoslovakia, and Holland, as well as Werewolf activities, as is shown in the testimony of the witnesses Von Poser and Kempf.

Although Speer had no direct authority for the destruction of industries in the occupied territories, he had to accomplish this

task on his own responsibility and through his agencies within the borders of the so-called Greater German Reich. He was kept busy in this connection trying to obstruct total destruction of all real values, which was obstinately demanded by Hitler. Information on this desire to destroy on the part of Hitler and many of his Gauleiter is furnished in the testimonies of witnesses Guderian, Rohland, Hupfauer, Von Poser, Stahl, and Kempf.

The most important document in this regard is the letter of Speer to Hitler of 29 March 1945 submitted as Exhibit Number Speer-24, in which Speer repeats again Hitler's remarks during the conversation on 18 March 1945. This document shows clearly that Hitler had made up his mind to destroy completely the foundations of the life of the German people. This document should yield abundant information about Hitler's time for any future historian. In connection therewith follows the evidence of General Guderian who certifies that in February 1945 Hitler, 1.) identified his inevitable fate with that of the German people, 2.) wished to continue this senseless fight by all means and thereby, 3.) ordered the reckless destruction of all things of real value. That is Guderian on Page 177 and Page 179 of my document book.

At the same time the clear demolition and evacuation orders of Hitler and Bormann, which were issued the day after the conference with Speer, have been submitted to the Tribunal as documents under Exhibits Speer-25, 28.

Ever since the middle of March 1944 Speer, considering this war inevitably lost, was determined to maintain the vital necessities for the German people, as has been confirmed by the witness Rohland. Notwithstanding the growing danger, he repeated this determination with increasing urgency to his collaborators, as the witnesses Kempf, Von Poser, and Stahl can certify for the months of July and August 1944 and the witnesses Stahl, Kempf, Von Poser, Rohland, and Hupfauer for the critical period from February 1945 onward.

Numerous orders of Speer dealing with the preservation of industrial plants issued between September 1944 until the end of March 1945 were submitted to the Tribunal. They were first partly issued without Hitler's authorization; but by a clever exploitation of Hitler's hope that these territories could be reconquered, they were in part subsequently approved by him. The testimonies of the witnesses Rohland, Kempf, and Von Poser, as well as Speer's numerous memoranda regarding the war situation, prove that he exploited Hitler's illusion, which he did not share, in order to prevent these demolitions.

Since the beginning of February 1945, Hitler no longer lent an ear to any such argument. On the contrary, the introduction

to his demolition orders of 19 March 1945 shows that he considered it necessary to oppose actively such argument. In counterorders, such as those of 30 March 1945 to all industrial plants, as well as those of 4 April 1945 for all sluices and dams, Speer gave instructions—in opposition to the orders issued by Hitler—not to undertake any industrial demolitions. This likewise is corroborated by the witnesses Kempf, Von Poser, and Rohland. During the month of March the executive power for the demolition of industrial plants and of other objects of value was transferred from Speer to the Gauleiter.

During this period Speer acted in open insubordination, and on trips to the danger zones he arranged for the sabotage of these orders. Thus, for instance, by clever planning he withdrew the stocks of explosives from the grasp of the Gauleiter, as stated by the witnesses Von Poser, Kempf, and Rohland, and gave orders that the so-called industrial explosives, which were used for demolition, should no longer be produced, as is proved by the statement of the witness Kehrl, the Chief of the Office for Raw Products of Speer's Ministry.

It seems important that Speer had urgently drawn Hitler's attention to the consequences which the demolitions would have for the German people, as is shown in Speer's submitted memorandum dated 15 March 1945 (Exhibit Number Speer-23). In this Speer, for example, has established that by the planned demolition of industrial plants and bridges, in the Ruhr for instance, the reconstruction of Germany by her own forces after this war would be made impossible. Thus it is without doubt mainly to Speer's credit that the industrial reconstruction of western and central Europe can make progress today and that in France, Belgium, and Holland, according to their latest reports, production has already reached the level of the peacetime production of 1938.

Speer was the minister responsible for the means of production, that is, the factories and their installations. Thus he sat in the transmission center through which Hitler's intended demolition orders must necessarily pass. We have noticed in this Trial how in an authoritative system such centers are in the position to carry out on a big scale the orders of the head of the State. It was a fortunate coincidence that at this decisive period a clear-thinking man like Speer directed this office of industrial demolition.

But with increasing intensification Speer took measures beyond his sphere of action in order to ease the transition for the German people and at the same time to shorten the war. Thus Speer tried to prevent the destruction of bridges. Every German knows that up to the last days of the war and to the farthest corner of the

German Reich, bridges were destroyed in a senseless way. Nevertheless, his efforts had no doubt a partial success. The numerous conferences which Speer held in this connection with military commanders are testified to by the witnesses Kempf and Lieutenant Colonel Von Poser. This witness was Speer's liaison officer with the Army, and accompanied him on all trips to the front.

These conferences were partially successful. Finally by the middle of March 1945 the Chief of the General Staff of the Army, General Guderian, and Speer, according to the latter's proposal, tried to obtain Hitler's agreement to alter his demolition orders regarding bridges; but they did not succeed. This is confirmed by the witness, General Guderian.

Knowing the possible consequences of those bridge demolitions, Speer finally, on 6 April 1945, issued 6 orders in the name of General Winter of the High Command of the Armed Forces to spare the bridges of essential railway lines in the Reich and in the entire Ruhr territory. These unauthorized orders were confirmed by the statements of the witnesses Von Poser and Kempf.

At the end of January 1945 he noticed that from a long-range point of view, the guarantee of sufficient food supplies for the German people and the spring tilling of fields for the harvest of 1945 in particular were endangered. Speer, therefore, allowed the requests for armament and production which were in his jurisdiction to be superseded and gave priority to the supply of food.

That this was done not only on account of the actual food situation but was mainly in order to relieve the transition period after the occupation by the Allied troops is proved by the statements of the witnesses Hupfauer, Kempf, Rohland, Von Poser, Riecke—State Secretary in the Ministry of Food—Milch, Kehrl, and Seyss-Inquart.

When Speer believed that he had new reasons for apprehension that Hitler, induced by his close collaborators in Party circles, would use poison gas in the fall of 1944 and then in the spring of 1945, he opposed this determinedly as proved in his cross-examination by the U.S. prosecutor, Justice Jackson, and by the testimony of the witness Brandt. Speer's statement that due to this apprehension he had closed down the German poison gas production as early as November 1944 was confirmed by the witness Schieber. Speer at the same time established that the military authorities unanimously opposed such a plan.

Finally, since the end of February 1945, the Defendant Speer had tried by planning conspiracies to have the war brought to an earlier end.

The statements of the witnesses Stahl and Von Poser show that Speer had planned other violent measures. Chief Justice Jackson

has established, too, in the course of Speer's cross-examination, that the Prosecution knew of further plans which were to be executed under Speer's leadership. Apart from all these activities, Speer's political attitude is illuminated by two facts:

1) In Speer's memorandum addressed to Hitler, submitted as Exhibit Number Speer-1, the defendant establishes that Bormann and Goebbels called him alien and hostile to the Party and that a continued collaboration would be impossible, should he and his assistants be judged by party-political standards.

2) In their government list of 20 July 1944 the Putschists quoted Speer as Armament Minister and as the only Minister from the Hitlerite system, as stated by the witnesses Ohlendorf, Kempf, and Stahl. Would these circles have proposed Speer as Minister, both in Germany and abroad, if he had not been considered an honest and nonpolitical expert for a long time? Is not the very fact that he, as one of the closest collaborators of Hitler, was chosen for this post a further proof for the high esteem in which he was held by the opposition.

My Lords, let me say a few more fundamental words about the Speer case itself. When the defendant took over the office of Minister at the age of 36, his country was in a life-and-death struggle. He could not evade the task with which he had been charged. He devoted his entire energy to the solution of the task, which seemed almost insoluble. The success he obtained there did not cloud his view of the actual condition of things. He realized only too late that Hitler was not thinking of his people, but only of himself. In his book *Mein Kampf* Hitler wrote that the government of a people always had to remain conscious of the fact that it should not plunge the people into disaster. Its duty was rather to resign at the right time, so that the people could continue to live. Naturally, such principles were valid only for governments in which Hitler had no part. As far as he himself was concerned, however, he was of the point of view that, if the German people should lose this war, they would have proved themselves the weaker nation and would no longer have any right to live. In contrast to this brutal egoism, Speer still felt that he was the servant of his people and his nation. Without consideration for his person and without consideration for his safety, Speer acted as he considered it his duty to act toward his people.

Speer had to betray Hitler in order to remain loyal to his people. One cannot but respect the tragedy which lies in this fate.

THE PRESIDENT: I now call on Dr. Von Lüdinghausen for the Defendant Von Neurath.

DR. OTTO FREIHERR VON LÜDINGHAUSEN (Counsel for Defendant Von Neurath): Your Lordship, Your Honors, "Never

before has war impressed me as being quite so abominable." This is what Napoleon Bonaparte wrote to the Directorate in Paris in the year 1799 after the victorious capture of Jaffa where he had ordered the shooting of 2,000 captured Turks. This statement by one of the most outstanding warriors of all nations stood for unqualified condemnation, not merely of war as such, but also of all means used in the conduct of war considered unavoidable but tolerated at that time. The ethical condemnation of war voiced in this phrase was not uttered in vain. As early as the middle of the last century, high-minded individuals made efforts to eliminate at least some of the horrors of war. The founding of the Red Cross in Geneva was the first far-reaching result of such endeavors, the first fruits of Napoleon's phrase. But I dare say, this phrase is, so to speak, also the actual impetus which gave birth to this present Trial. It, too, was caused and dictated by the endeavor, not only to restrict methods of warfare, but beyond that to find means and ways to eliminate war altogether as a political measure. It strives for the same high goal: To create a body of international law to govern the relations between the peoples of all states, a law to which governments and peoples will submit, if they wish to take their place among civilized states, and by which they will be forced to abide in the same manner as the individual national of a state must abide by the law his state has established for the common existence of its people. It may be difficult for you, Your Honors, and for the entire world to understand how infinitely painful it is for us Germans that it is just our state and our people who have furnished cause for the creation of such international law by a war in which we engaged; yet my client, the Defendant Von Neurath, and I could not help but welcome this Trial, because the greatest efforts were made by my client during his entire official activity, from his first day in office to the last, to avoid war and to serve peace. And I do not hesitate to emphasize this, although it is because of an entirely new principle of law that my client is facing this Court today. Because for the first time in history the idea is to be carried into practice according to which the statesmen of a nation are to be held personally responsible and are to be punished for the inhuman acts of wars of aggression caused by them. This thought, which this High Court is about to carry into practice as a principle of law, is a novelty in the history of international law. But if the present Trial and the Charter on which it is based is to be more than a single procedure worked out and intended for this one case—in other words for this war just ended—if it arose not merely from the thought of vengeance because of harm and damage done to the victorious nations and if it really was brought forth by the will and the decision to eliminate war in itself for good by

holding the statesmen of the nations personally responsible, then this constitutes a deed which the sincere conviction of every peace-loving person will welcome. It furthermore contains two elements calculated to revolutionize all that was heretofore known in this world regarding the foreign policy of states and to raise it to a new and undoubtedly higher ethical basis.

Since the famous speech made by Pericles and since Plato's state doctrines it is an ancient, well-established postulate for the policy of a statesman to endeavor to obtain for his people, for the state under his stewardship, the highest possible level of existence, the maintenance, and improvement of its standard of living, of its position among the nations, irrespective of the means it might require. Every nation on earth includes in its history statesmen who, seen in this light, are extolled and honored as shining examples, and who went down in history as such merely because they were successful, without examining whether the means they used to obtain success were in harmony or not with the ethical principles not only of the Christian but of all leading moral philosophies. To this maxim the Charter of this High Tribunal opposes a new maxim in that it plainly stipulates that every war of aggression places culpability on the person responsible for the war, regardless of whether the war was won or lost. However, this means nothing else but subjection to the moral law—which rejects application of force of any kind as a means of policy—of every state stewardship, even the successful and the victorious.

If, however, this is to have practical meaning and is to be successful, then there follows the subjection of every state stewardship to the test and judgment of all other civilized states in the world. On that principle of the Charter established by this High Tribunal it would call for the examining and possible judgment of all inner-political measures which, in retrospect, might be seen as actions of preparation for this war. To discuss consequences resulting from this would lead too far; this must rather be left to the discussion by scholars of state law and to further developments, and I wish, therefore, to confine myself to pointing to one consequence only, the consequence that the statesmen involved in the war of aggression will be subject to such judgment of a future international world court and will be liable to punishment, even if that war of aggression ends in victory. Perhaps this is the main point, reflecting the highest ethics of the stipulations and principles established in the Charter.

If I particularly stress these points it is not because my client or I doubt that the authors of this Charter were not fully aware of these consequences too. But in the fact that this new tenet

of international law is to find application for the first time before the world forum and by the Allied governments not through a power dictate but through a court procedure based on objectivity and impartiality, in this fact my client and I see proof that this court procedure had its birth in the ideal aspiration of mankind to free itself from the scourge of war.

And even if my client and I fully recognize the important issue in this Trial as based on the Charter, namely that in sharp contrast to the principles of law of all democratic states, of every democratic-liberal principle of law, it proposes to pass judgment and inflict punishment for actions which at the time they were committed were not governed by law, my client and I nevertheless are confident because of our conviction that this High Tribunal will not base its verdict on individual and incoherently joined actions, on single bare facts, but that it will scrutinize and examine with care the motives and aspirations which moved each individual defendant. If then you, Your Honors, will establish, as I am convinced you will, that from the first to the last day of his official activity as Reich Foreign Minister or as Reich Protector, my client was moved by one desire only, that all his deeds and actions were governed by one aspiration, to prevent a war and its cruelties, to maintain peace, and that the very reason for his remaining in office was to prevent war and its inhumanity through his influence and that he did not withdraw from his post until he was forced to conclude that all his efforts were in vain and that the will and determination of the highest ruler of the State, Hitler, to wage war were more powerful than he, then the fact of his membership and continuance in office in the Reich Government until that moment cannot possibly be construed as approval, much less as assistance and copartnership in the planning, preparing, or waging of war, thereby placing upon him joint responsibility for the war, and even for cruelties and atrocities committed during its course.

The very fact of the application—an application made for the first time in this Trial, at least in international law and in democratic states—of the legal doctrine, that an action already committed can subsequently be made punishable by law, results in the imperative demand that the question of the subjective guilt of the defendant—in other words the consciousness not only of the amorality and the presumed criminality of the deed in question, but also the intent to commit the deed or at least to offer active assistance despite such awareness—be examined and answered before a verdict is arrived at. Disregard of this postulate would not only rob this Trial of its high ethical importance but would open wide the door to arbitrariness, making such court procedure

appear before the world, not as a real court in the truest meaning but a power dictate wearing the robe of justice.

An extraordinary responsibility is thus placed upon your shoulders, so great as has never before been placed on the shoulders of any court in the world. Carrying out the will and the vision of the father of this Trial, President Roosevelt, who passed away far too soon, it is your task, Your Honors, to lay the first cornerstone for the temple of peace of the nations of the earth. You are to lay the foundation for the attainment of the ideal he envisaged, perpetual peace. Coming generations are to continue to build on your judgment. You are to give the directives according to which those who come after us must continue to aspire to this high goal. It is not a precedent you are to establish, not an individual case you are to judge and to punish the guilty men according to your judgment, but you are to lay down the fundamental principles of a new international law which is to govern the world in the future. This alone, this task assigned to you, establishes the meaning of this Tribunal, its justification, and its high ethical inspiration, to which we yield. At the same time, however, this also includes the recognition that the verdict to be established by you in regard to these defendants is not a verdict in the ordinary meaning of the word; it is not merely a judge's sentence pronounced on behalf of individual defendants and their deeds; but it is the new fundamental law itself, the source from which all future courts are to draw, in accordance with which your verdict is to be established.

It is, therefore, your task, Your Honors, to interpret the provisions of the Charter according to their principle and to establish in practice and for all time to come, the rules and principles of the Charter. The responsibility which you thereby assume before history puts two fundamental questions to you, the answers to which are all the more complicated because the legal concept of conspiracy incorporated in the Charter and forming the legal foundation of the Indictment is a concept foreign not only to the majority of peoples, especially the European peoples, but also because in some countries it owes its existence to its previous application to the fight against common crimes and offenses against the legal provisions governing domestic affairs and against those alone. The postulate necessarily follows that the method of interpretation and the application of this legal concept in international law must never be the same as that employed in the fight against common bands of gangsters, guilty of a breach of the social order of a particular country and of the laws promulgated for its protection. The latter ordinarily involves individuals of a more or less amoral disposition, who act for reasons of selfishness, lust

for money, or other unethical instincts which place them outside the existing social order. In the last analysis, however, and particularly when wars of aggression are involved, international law does not deal with individual statesmen but much rather with whole peoples. The age of absolutism, where the will of the ruler alone determined the destiny and acts of a people, has definitely passed. In this age it may be said that one cannot imagine any avowed dictator or omnipotent despot who can rule without or against the will, or at least the tacit approval of the nation, at least its majority. And so—it is necessary to make this known to the world—invisible behind the defendants, there sits also in the prisoners' dock our poor beaten and tortured German people, because it placed upon a pedestal and selected as leader a man who led it to its doom. From this follows of necessity the inescapable demand that, contrary to the concept of a conspiracy applied in regard to ordinary criminals, application of the concept of conspiracy applied in international law must first proceed to investigate and examine how it happened—how it could happen that an intellectual, high ranking people, a people who gave so much to the world in terms of cultural and spiritual gifts as the German people did—that it could hail a man such as Hitler, follow him into the bloodiest of all wars, giving him the best it had. Not until you, Your Honors, have taken this into consideration and examined this question, will you be able to establish a just verdict in regard to the individual defendants themselves, with due consideration for their dissimilarity—a judgment which will stand the test of history. Because of such reasoning and not merely by reason of my right as defense counsel of the Defendant Freiherr von Neurath, but also because of my duty as a German, I deemed it necessary to explain in mere outline the fact of Nazi domination which the world outside Germany cannot grasp; to make you visualize how it happened as a result of the effects of the Versailles Treaty and finally, because of the manner of its application, how it was bound to happen, true to historical necessity.

In view of the short amount of time made available to me by the decision of the Tribunal, I must refrain from reading that part of my final pleading; but I express my definite hope that the Tribunal will subsequently go to the trouble of reading it themselves and that they will consider its arguments when pronouncing the verdict.

After the world-embracing battles of her great emperors, after the death of the last of them, the Emperor Barbarossa, the royal sovereignty perished and consciousness of national unity became more and more lost; the ancient hydra of dissension among the German tribes raised its multiple serpent's head. On the decayed ruins of the German throne a new world of particularized territorial powers came into being. Spiritual and temporal princes, free cities, counts and knights formed in the course of the following centuries a shapeless confused mosaic of incomplete greater, smaller, or infinitesimal state structures, which

undermined and strangled all desire for a unified state and nation. Princes, nobility, freemen, and peasants all chose their own individual ways. Particularistic and selfish interests of the different classes frustrated all attempts to classify politically the abundance of creative power within the German nation, and to reconstruct in some form the decayed unity of state and nation. In addition to all this an event occurred at the turn of the fifteenth century which was perhaps the greatest tragedy in the history of the German nation: The Lutheran Reformation, born of the deepest origins of German religious feeling and thought. This Reformation, however, instead of uniting the various German races, instead of arousing this nation split into hundreds of small parts to a common ideal and to a consciousness of national unity, brought a still greater and deeper schism, the schism of faith, to this poor dismembered people under the rule of an emperor who, though powerful again, not only failed to understand German mentality or the Reformation born of it, but even felt hostile toward it.

For Charles V attempted to smite this Reformation, which he considered heretical and sinful, with fire and sword and thus led the German people into the darkest hour of their history. In the subsequent wars of religion, Germans turned their weapons against Germans, forgetting their kinship to such a point that they called in foreign nations to aid them against their own German fellow countrymen and tore each other to pieces side by side with them. With the end of the Thirty Years War the helplessness of the German nation was finally settled. It became the plaything of its neighbors' desires, the welcome battlefield of foreign nations; and all this occurred at the very time when the English people under the leadership of their gifted Queen Elizabeth, and shortly afterward under Oliver Cromwell and under a Parliament which, freely elected by its people, was possessed of a sense of responsibility, laid the foundation necessary for its ultimate position as a world power; at a time when the French people, led by their energetic and powerful kings after the defeat of a feudal aristocracy, had long been welded together into full unity and into a nation. In Germany, however, every German purpose became benumbed. Through poverty caused by the long wars all national consciousness vanished, not only in the political but also in the psychological sphere, even to the very language. The people embroidered their ancient language with foreign idioms, and the great philosophers and poets wrote in French or Latin. Thus, in the petty troubles of a miserable existence, the mass of the German people lost its last recollections of the sovereignty of their Reich.

Unfamiliar and no longer understood, the Gothic cathedrals tower up in this changed world as witnesses of the past glory of the German burghers. Each lived only for himself, for his poor petty existence. Was it to be wondered at that on such miserable soil, under the rays emanating from the admired French monarchy, an absolutism developed in almost all German courts, down to the smallest domains, which enabled these more or less important gentlemen to copy the R o i S o l e i l of France? Only when, at the beginning of the 19th century, Germany in alliance with other countries rose against the foreign rule of Napoleon, did the Germans reawaken to consciousness of their racial community by these wars of liberation.

After eight centuries the slumbering desire for a revival of the ancient glory of a unified and honored empire of the German nation in a new form was rekindled. But only some 75 years ago, after decades of strife and disappointment, did this ardent dream become reality, so that a unified German Reich could arise in a new form. In this hour though, for the first time in its history, the German people was taken into consultation by the new Constitution, to advise and collaborate in the direction of this new Reich. Together with this right, however, the common responsibility for the administration of the State was also imposed. However enthusiastically and joyfully this new right was received, the people could hardly judge at once of the eminent seriousness of this duty. Was it not demanding too much that a people, the bulk of whom had for centuries been excluded from any participation in the leadership of its country and its fate, should learn in a few years that which others had taken centuries to learn gradually, something which was to be an essential part of its existence, thought, acts, and feeling?

One of the leading men in the oldest democracy in the world, the British Prime Minister, Stanley Baldwin, in his speech in the House of Commons on 11 March 1935, declared democracy to be the most difficult system of government, which can only function if the entire population is able to think intelligently

and to appreciate well-considered opinions and is not liable to be led away by propaganda and sentiment. This is the fundamental difference between the Germans and the other western peoples, which cannot be erased by any dialectics and which explains to a great part the developments of the last seven decades. An entire population, however gifted and clever it may be, cannot in a period of 50 years be trained and fully educated in a sphere previously unknown. By experience alone, and even then only gradually and slowly, are political intelligence, sense, and instinct evolved together with a gift of perception of right and the understanding of cohesion in political and social life, and likewise the knowledge that each individual is himself responsible for what is done for and in the name of his people. Inexorably the continuous action of the past in the present is reflected in the history of those nations which do not believe in this historical law nor wish to do so.

Inevitably, the primary consequence of nonparticipation and lack of coresponsibility in the government for hundreds of years by the German people was the belief that it could give its confidence to the men charged with the leadership, the more so if such leadership, particularly in matters of foreign policy, was in the hands of a statesman like Bismarck, under whom the young Reich incontestably flourished in all spheres, particularly in its economic life and under whom it enjoyed a blessed period of peace such as it had not experienced for a long time. Trusting and inexperienced as they still were, the German people believed it could also meet the successor of a Bismarck with the same confidence.

But even if in the sphere of domestic politics some opposition was gradually voiced against the new policy, the bulk of the German people was firmly convinced that in foreign policy the new leaders would not divert from Bismarck's peaceful trend. In its lack of experience and faced with the secret diplomacy generally followed, the German people were not in a position to judge whether the policy followed by their leader was right or wrong. It therefore never occurred to the bulk of the German people, nor could it occur to them, that the policy followed by Bismarck's successors might lead to war. To the people itself the idea of war was quite remote. It had no other wish, no other longing, but to work peacefully for the domestic development of its recently created empire, and to live for the growth of its prosperity. There was nothing beyond this wish that would have been worth the blood of its sons.

The nation was therefore utterly disconcerted when the first World War broke out and could not understand how other countries could possibly believe it to bear the exclusive guilt for this war after its Kaiser's ostensible exertions for the preservation of peace. With the greatest seriousness, inspired by the most sacred conviction that it was now a matter of defending home, wife, and child against the unprovoked attacks of hostile powers, it took to arms. And for the same motive, the German nation has never, even after the collapse of its powers of resistance through enemy superiority, to this day understood or in any way sanctioned the admission of exclusive war guilt imposed upon it by the Peace Treaty of Versailles.

Consequently it did not feel and, to this day, does not feel this treaty to have been a real peace treaty, but a peace dictate imposed upon it by the victorious powers, a dictate which, to it, is not the expiation of a wrongdoing it committed, the kindling of a war, but solely the expression of the purpose to destroy the unity and freedom it had reconquered only a few decades back, and its existence as a nation and a state.

Again this poor people stood on the brink of the abyss; all that it had longed for and dreamed of during long centuries had finally become reality a few decades ago, and now everything threatened to crumble once more into rubble and ruin. Again it stood, as centuries before, at the bier of what it possessed; again it stood in danger of losing its existence as a people and a nation and of falling back again into the misery of earlier times. Only one thing was left to it at this time; and that was the consciousness of its national character, of its solidarity as a nation. And it is a veritable page of honor in the history of German social democracy that it made this consciousness, this feeling of solidarity, its rallying cry, inscribed it on its banner, preserved and strengthened it in the great masses of the people and opposed with all its influence the separatism which was once again rising, and so helped to preserve the unity of the Reich and of the nation.

Although a great deal, it still was not enough, because the Treaty of Versailles faced it as a terrible danger. This treaty put the axe to the roots of its material existence, to its economic life, and cast it for generations into an economic bondage which was bound to suffocate it. I do not need to review these stipulations to you in detail; they are history. After a short time they worked to the detriment of the entire world, thus proving themselves untenable. But whom did the German people have to regard as the principal author of this treaty? France alone, who thereby once more believed she could perpetuate the policy applied toward Germany since Richelieu of keeping Germany down, if not of annihilating her for all time. That was the desire and dream of a nation which proclaimed to the world the Rights of Man, the same nation which 130 years before had written on its banners the motto: Liberty, Equality, Fraternity.

To all this was added the internal revolution, which had deprived it of any natural and given leadership which might have been able to show it the way to combat threatening chaos. All by itself, without any help, without any experience of its own, it had to create for the first time a new nation, or rather the foundation stone for such a nation—truly a gigantic task for a people which up to this moment, in its entire past, had always been led, to which a right of self-determination and therewith a duty of coresponsibility, had only been given 50 years ago and then but to a modest extent. Was it astonishing that this task should overtax its strength, that this nation, which had not yet gained a firm political tradition and was torn internally in many directions, soon became the victim and playground of a variety of prophets who promised it salvation in all possible ways?

So it came about, as it was bound to come about, that a constitution was given to it in Weimar which did not suit either the actual circumstances or the character of the German people or the requirements of a strong state leadership, a constitution which did not create a real democratic people's state but only a party state, in which not the people but rather the parties were made the supporters of the state, in which merely the mechanical counting of the votes was assured, while it was left to the parties to settle the conflicts resulting from this. The inevitable result was an infinity of parties which fought with every means for the votes of the masses and thereby created an unlimited splitting of the people into a multitude of components, all fighting tooth and nail among each other, which paralyzed any strong and consistent state leadership from the beginning and indeed rendered it impossible.

Right here, in the conflict of interests and allegiances of the parties struggling with one another for supremacy in the state, lies one of the tragic causes that explain the birth of National Socialism and the subsequent seizure of power in 1933. For the history, the rise, and the fall of re-emerging nations is determined by eternal laws which develop and direct events with inexorable logic. Just as without the great French Revolution a Napoleon would never have been possible, so without the basic weakness of the Weimar Constitution there could have been no Hitler. Under such conditions, which became increasingly difficult, the German people took up the fight against the destruction which threatened them.

Who refuses or fails to understand that they had become the football of innumerable parties which fought for their votes, who, out of egotistical interests, destroyed one government after another and thereby made any strong, unified state leadership impossible? With admirable courage and under exertion of their utmost strength, the German people, nevertheless, had taken up and carried on this almost hopeless struggle, had tried to fulfill the reparations, imposed by the Treaty of Versailles, which were bleeding them white. They had even accepted the inflation, which had left its imprint on their economic life; and for the sake of the existence, above all, of their middle classes and to avoid the selling out of their properties through foreign capital, had persevered and conquered it.

But all their efforts, their labors, their privations were ultimately of no avail. Their standard of living became lower and lower, more and more factories had to close their doors, sales to foreign countries increased more and more, for a piece of bread and butter more and more items of the national wealth passed into foreign hands, unemployment increased more and more, and finally almost 10 percent of the entire population were without employment and food.

And why all this? The Western Powers, primarily France, instead of mitigating in their own interests the impossible conditions imposed upon Germany

by the Versailles Treaty, used every opportunity to weaken Germany's situation still more and to make it more difficult, to enslave the German people still more. I would only remind you, above all, of the occupation of the Ruhr territory by France in 1922, which was the reason why, in spite of superhuman efforts, Germany was not in a position to meet the full amount of the reparations imposed upon her.

Already in 1920, French troops had entered the Main province on the doubtful grounds that, while subduing the Communist revolt in the Ruhr area, the Reichswehr had entered demilitarized territory. And in February 1921, at a London conference, new payment conditions were laid down for Germany as the result of a delivery of reparation coal to not quite the full amount, due to a Communist revolt in the Ruhr area. When again these simply could not be met by Germany to the full extent, Allied troops crossed the lower Rhine and occupied the bridgeheads on the left bank of the Rhine. When on 3 May 1921 the ultimatum, which had been prepared in London, was delivered in Berlin by the victor nations, whereby the payment of 132,000 million marks in 37 years, and a quarter of the German export to England and France was imposed on Germany, French and British troops already stood prepared to march in in order to enforce this ultimatum.

In view of the coming plebiscite concerning the division of the Upper Silesian industrial sector, the German Government had no choice but to accept this ultimatum at a time when 30,000 million marks were required to produce a 1,000 million in foreign gold currency. And as, after the division of Upper Silesia between Germany and Poland to Germany's disadvantage, the year 1921 came to a close, Germany came under the domination of the so-called Reparations Commission, which not only dictated to Germany a number of new taxes but, moreover, also demanded at once a payment of 280 million gold marks.

From the Economic Conference which met at Genoa on 10 April 1922, Germany hoped in vain for deliverance. From the start France rejected any discussion of reparations and all other economic problems. It was soon to become clear to the whole world what France was aiming at by this uncompromising attitude. Weakened by the measures of the Western Powers, the loss of the Upper Silesian industrial area, and the vertiginous devaluation of the German mark, the German Government in 1922 saw itself twice forced to request delay in the payments. It had, however, to pay for this delay by the acceptance of a financial control by the Western Powers and by impotently standing by as the Germans were evacuated and driven away from Alsace-Lorraine by France, their property being confiscated by France. And when on 15 August 1922 the German term policy finally collapsed, the German Reich could no longer meet fully even deliveries in kind, so that in December 1922 the Reparations Commission believed it could establish the fact that during the year Germany, due to insufficient deliveries of lumber and telegraph poles, had been guilty of a deliberate misdemeanor. France seized the opportunity of this ostensibly deliberate misdemeanor to introduce the right to impose sanctions.

In contrast to England and Italy, who did not insist on territorial pledges, she permitted her troops to cross the Rhine and occupied the Ruhr area. Her dream had come true. Germany, completely without rights, had collapsed and was at her mercy. How does this open desire for destruction, which no flower of rhetoric can deny, compare with the community spirit, so strongly emphasized today by the French Prosecution, with humanity and the teachings of the Christian faith? Your Honors, I was forced to bring all these historical events once more into the open in order to show you how the soil was prepared in which grew the seed of National Socialism. Indeed, that seed had inevitably to grow, and was only recognized as dragon's seed when it was already too late.

Almost simultaneously with the establishment of the Stahlhelm in northern Germany, the German Labor Party was established in southern Germany, which Hitler joined as its seventh member during 1919, immediately assuming leadership. Both were derived from the war experiences of a million soldiers and the comradeship which had been carried to the highest level during the war, both had inscribed on their banner the national idea, the re-establishment of a new national state. While the Stahlhelm was satisfied in the main with the promotion of national and socialist tradition amongst its members, which soon numbered hundreds of thousands, and did not aim at party-political goals, the German Labor Party under Hitler's leadership soon extended its aim very much further, thus making itself the political exponent and mouthpiece of a national as well as a socialist aim,

namely, that of bringing about an internal regeneration of the entire nation by blending the national idea with the social idea in approaching the problems of the day.

This aim was based on the conviction that at some time, as a result of Germany's collapse, there would gradually occur a complete change in the social structure of the German people and, further, that a re-establishment of the Reich would only be possible if a really uniform racial community necessary for this were created on a national and social basis. According to Hitler's conviction, this was only possible if socialism were based on racial community and v i c e v e r s a and both were welded into one unity. He therefore gave the German Labor Party the program which is only too well known, while at the same time changing its name to National Socialist German Labor Party. This program was national in its demands for liberation from the shackles of the Treaty of Versailles and for the establishment of a new unified German Reich, socialist in those demands which, with special emphasis on the value of labor, included above all the discontinuance of an income without work or effort, nationalization of certain industries and the resources of the soil, as well as abolition of the so-called servitude of interest.

As soon as this program had been set up, there radiated unmistakably from it the desire and will, slumbering in millions of Germans, for a rebirth of Germany out of all her misery, for a new national and social freedom. And in connection with this program there is something which I must strictly and definitely establish once and for all before the whole world. It is not true that the much discussed Point 2 of this program, which demands the setting aside of the Treaty of Versailles, contains or contemplates a threat of force. The assertion of the Prosecution to that effect lacks all justification. Nowhere in this program was a single word said regarding force. Or does the Prosecution recognize a threat of force in the reference to the principle of a nation's right of self-determination.

No wonder that this program, which, more than all other Party programs, embodied the wishes and demands of the time, gradually met with approval and exercised a greater and greater attraction. And it was the ever-recurring burdens and reverses imposed on the German people by the Western Powers, above all the occupation of the Ruhr area, which more and more enhanced this attraction. For particularly the occupation of the Ruhr territory, which the entire German nation regarded as oppression and which had brought forth this courageous opposition, permitted the awareness of national unity to flare up in all its brilliance for the first time since 1918. A great tragedy lies in the fact that the Western Powers did not recognize this first flaring up of a new German national consciousness, did not understand this symptomatic sign, and showed no interest at all. Who knows if, by a gradual loosening of Germany's economic and political shackles on the part of the Western Powers, the development of things would not have taken an altogether different course; and the world might have been spared the bloodiest of all wars!

But instead of loosening their grip, the Powers tightened it more and more during the following years. Under the pressure of the Western Powers the well-known Dawes Plan was drawn up in 1924, which changed the German reparation obligations into negotiable papers and thus compelled Germany to contract enormous loans abroad against the possibility that the Reichsbank might be emancipated from the Reich and placed under the supervision of a special commission, against the transformation of the Reichsbahn into a joint stock company and the mortgaging of debts, taxes, and other securities, in order to be able to comply with her reparation obligations. This, however, in face of the impoverishment of Germany due to inflation and to the enormous selling of German national property to foreign countries, together with the necessity of having to pay interest on these loans abroad, meant a still greater enslavement and subjection of German economy, of German activity in all spheres, under the rule of foreign countries and foreign capital. And the Ruhr area remained occupied.

In 1925 the Dawes Plan was followed by the Locarno Pact. The latter, which was in the first place a political insurance scheme of international finance against the risk contained in the granting of loans to Germany, indeed in a certain sense connected the interests of the Western Powers with Germany's economic payment obligations and compelled them to extend a respite to Germany and also gave her, through her more or less compulsory admission to the League of Nations, the basis for her eventual struggle for the recognition of equal rights; it meant however, on the other hand, the repetition of the discrimination against Germany

by the repeated recognition of all military and political obligations imposed upon her at Versailles. Meanwhile German economy indeed appeared to flourish again as a consequence of the capital pouring into Germany under the Dawes Plan; this economic prosperity, however, turned out after a short time to be sham prosperity. Another period of tremendous unemployment set in, one factory after another was forced to close down again, the standard of living constantly decreased, poverty became worse and worse.

The distress of wide circles of the population and the impossibility of complying with the German payment obligations became constantly more obvious. Instead of helping Germany, however, the Western Powers submitted a new plan at this moment of extreme distress, the so-called Young Plan, which indeed brought with it the evacuation of the Ruhr, although no alteration of the discriminating conditions of the Versailles Treaty, but the imposition of immense yearly reparation payments up to the year 1966. In order to protect Germany from a catastrophe, the German Government was compelled to accept this plan.

Not only a complete revolution of the economic structure, but also a revolution of the sociologic structure was taking place within the German people under pressure of all these events attended by their difficulties. What had already been proclaimed in World War I, and had found a definite shape during the years of the inflation, now became conspicuous and grew into a decisive factor of further development. The majority among the independent middle class and the larger part of the bourgeoisie were gradually becoming proletarian while the working classes partly sank more and more to the bottom of the social order because of increasing unemployment; property was held only by a small and dwindling part of the people. Through this revolution in social conditions and class contrasts, the difference between the bourgeoisie and the working class was practically eliminated and a large community with a common destiny grew out of the distress of the times, in which all parts of the people found themselves united.

This fusion of the upper and lower classes, which had hitherto been separated from one another, produced a state of mind in which the concept of racial community was innate and the inner contrasts and distinctions of which were conditioned more by participation in politics than attitude to the latter. These contrasts, this contrasting attitude toward politics culminated in two ideas, that of nationalism and that of international Communism. And here Hitler, and the NSDAP with him, began that struggle for the soul of the German people in which he took a resolute and purposeful stand in the struggle for the national idea against the international communist idea. In this struggle, which was started by him immediately after the occupation of the Ruhr with all propagandistic possibilities and by fully exploiting his indisputably extraordinarily suggestive influence on the masses, it was precisely the Western Powers, with their policy of confining the German people in ever closer bondage and driving it into ever greater distress, who furnished him his keenest weapon.

With this weapon he succeeded in rekindling the national idea in more and more circles of the German people, so that in the Reichstag elections of 14 September 1930 the NSDAP was already able to figure in the Reichstag as the second strongest party. These elections showed two things of singular significance: First of all, the will of constantly expanding circles of the German people to re-establish its honor and equality in the council of the nations, the will to live of a people who for 12 years had been suppressed and humiliated in its most elementary feelings and had been gagged and threatened in its existence. However, they also showed that a large part of the people had become tired of the eternal party strife in the Reichstag and the Government and were longing for a leader to lead them out of the threatening chaos, and that this large part of the people regarded Hitler as the leader.

However, once again the Western Powers failed to recognize this signal. They forgot, or did not want to acknowledge, that the fundamental physical law that every living force, if subjected to pressure without an outlet, will explode the shell around it, also applies to the life of the nations, because the nations also represent a living force. They forgot this, although in their own history they had excellent examples for the correctness of this thesis: the French people in their great Revolution, the English in Cromwell. Instead of obeying this law, they continued without change in their previous policy. They replied to the elections of 14 September 1930 by withdrawing the credits granted to Germany, and France

obstructed all attempts of the German Government to obtain any kind of mitigation in the economic and political fields.

In view of the limitation of time for their final pleas, to which the Defense have been subjected, I must desist from describing the results of this policy more closely; and I must limit myself to the statement that the need of Germany became constantly greater, while conditions in Germany were gradually becoming intolerable. No one who has not personally lived through it can quite imagine what conditions were like inside Germany at that time, and what appalling distress, what atrocious pressure assailed her. Germany at that time was literally suspended over the abyss because, in addition to the struggle for her very existence, there was the struggle for the inner change of form of the people, the struggle over the question whether the majority of the German people was willing to surrender itself to socialism on a national basis or a millenial international Communism.

To this question the German people first of all replied by re-electing Reich President Von Hindenburg on 13 March 1932 and finally, when even a man like Brüning no longer succeeded in forming a capable government majority from the parties of the Reichstag, by the Reichstag elections of 6 November 1932, from which the NSDAP emerged by far the strongest party of the Reich. Almost one-half of the nation had thereby uniformly expressed that it was tired of eternal party disunity, that it longed for a strong leader who was to save the German people from all its want, to tear it away from the abyss, and to lead it toward a new future.

Since on the other hand, however, the Communists also had achieved a great success in the elections and prepared for an open battle for power, Hindenburg saw himself confronted by the choice of either appointing Hitler Reich Chancellor as leader of the strongest party or of proclaiming military dictatorship. The latter, however, would have meant civil war. After a severe inner struggle, Hindenburg, in accordance with the democratic basic principles to which he was pledged, decided to appoint Hitler Reich Chancellor and thereby saved the German people from a civil war.

Thus, and in no other way, did the seizure of power in the German Reich through Hitler and the NSDAP take place. History in its logical development was uncompromising as always. The reason for Hitler's appearance and his rise to power lies after all in the Versailles Treaty, which put the German people into intolerable chains which no people on earth could endure in the long run. It was the tragedy of Germany and of all Europe that the victor powers of Versailles refused to consider this, and instead of recognizing the unnatural condition which had been established in Versailles with its unavoidable results, proceeded to aggravate them more and more in the course of the years. Let it be said here in all frankness that it is not only the German people who bear the guilt for Hitler's appearance but, if in history one can refer to any guilt at all, to an equal extent the effects of the Versailles Treaty. All nations on earth, as long as they harbored a spark of the will to live and strength of life within themselves, have always in days of the deepest need and dishonor produced men who, chosen by history, have risen to be leaders out of such misery by their very personality and by their ability to carry away the masses. The great tragedy of the German people lies in the fact that here was a man who did not spring from the authentic and genuine German race, did not incorporate in himself the true character, the true disposition of the German people, but was a stranger whose origin and descent is still wrapped in mystery. But at that time, in those fateful days, he must have appeared as the only one who could lead the German people from chaos to a new life, and who through the circumstances and the will of the people obtained the force and power to do so. The power of attraction of Hitler on the masses was all the greater since behind him stood the towering shape and nimbus of Reich President Von Hindenburg, who had already almost become a myth. But it must be pointed out with emphasis, in the interest of truth and for the honor of the German people, that at the first new elections after the assumption of power by Hitler the Party did not succeed in obtaining the absolute majority in the Reichstag, rather that about half the electors still followed the democratic spirit of their old parties, which proves how deeply rooted the democratic idea already was in the German people.

Hindenburg's authority also backed up Hitler's governmental actions which now followed, which from his point of view aimed logically and consistently at helping his state leadership to lend the maximum vigor and strength to his fight

against the forces of decomposition still existing in the country, as well as in the struggle for economic and political freedom. Without such strong and uniform state stewardship this struggle was not feasible. This was proved by the experiences of the postwar period. It was therefore not only a consequence resulting from the personality of Hitler, even though he did endeavor to collect for his state stewardship all the forces inherent in the people for the approaching fight for their existence and then to agree, with the consent of the President of the Reich through the democratic Constitution of a freely elected Reichstag, to the so-called Enabling Act of 23 March 1933, whereby he obtained the sanction of the Cabinet to the so-called Conformity Act of 7 April 1933. Both laws served Hitler's ambition to enable the Government to enlist all the necessary national strength in the coming fight for existence. The law concerning the unity of State and Party, as well as the dissolution of all other parties, served the same purpose. As a result of existing conditions all this was due to the demands to eliminate all internal disturbances and thereby give the Reich Government a free hand in its fight against economic distress, and at the same time to regain for Germany a fitting place in the council of nations. This demand explains also the establishment of the Secret State Police to deal with the combating and eliminating of underground Communist agitation.

The majority of the German people, above all the youth, lacked, besides any experience whatsoever, also the faculty to judge at that time the future extent and possible development of these measures. Above all it was the youth which in its distress rejoiced in Hitler as the longed-for leader and followed him with blind confidence as the man who was to deliver it from all unnatural shackles and all shame. Gerhart Hauptmann, the well-known German poet and great authority on national traits, who died recently, wrote a sentence in what is perhaps his profoundest psychological book Der Narr in Christo (The Fool in Christ):

> "Nature's greatest social unifier is always a common image of phantasy as is well known to those who wish to establish an orderly unit out of a multitude of people. Such state-building oppressors and dominating types make use of those men who, endowed with a fanatical imagination, believe in, further, and carry out their dreams, and thereby erect for the masses a common shrine for which, for long periods of time, no sacrifice is too costly."

How much more must the truth of this quotation hold good with a nation which, as I have attempted to show, throughout its entire history has always been accustomed to be led, which practically never directed its own fate, which for 15 years had again and again been disappointed and had had to lose all hope that the other states would come to its aid. All the more did it approve this strength of the state leadership since it was tired of the constant party conflicts and, undisturbed by further internal fights and upsets, only desired to devote itself to the re-establishment of its economic existence. In its blind confidence, it had as yet not recognized that through government measures it could in future itself be placed in shackles, that it could itself be deprived of the possibility of taking a stand against a state leadership which was repugnant to its innermost feeling. At first confidence in Hitler was still confirmed and strengthened by the undeniable fact that Hitler succeeded in restarting the economy and banishing the specter of unemployment, for in the short span of one year Hitler had already succeeded in giving work and bread again to almost 2 million unemployed. And if these successes were partly made possible by recommencing armament and other public works, he did not promote any of the formerly somewhat belligerent desires and impulses of the German people, but met only a craving for military spectacles which had been present in the German people since olden times, together with a certain inferiority complex. General Smuts recognized this absolutely correctly in his speech before the Royal Institute of International Affairs on 12 November 1934, when he said:

> "We are continuously told what is going on on the opposite side of the Rhine, on the subject of the secret armaments. It probably is nothing else but the consequence of an inferiority complex. It is not real militarism, but these are military stimulants for the masses. This wild behavior creates a blessed feeling of satisfaction and relief in those who consider themselves inferior or humiliated by their neighbors across the Rhine."

So the German people enjoyed the military rights offered to them, not out of the belligerent impulses attributed to them by the Prosecution or even from

a wild desire for aggression dormant in them, but simply because of joy in the spectacle and out of an instinctive feeling which the founder of modern historical research has expressed as follows:

> "The national consciousness of a great people demands a suitable position in the world. Conditions abroad do not form an empire of convenience, but of essential power. The respect of a state will always correspond to the development of its interior powers, and each nation will resent not seeing itself in the place befitting it."

And now these people, who had languished under this instinctive feeling of inferiority up to the seizure of power by Hitler, saw how suddenly, as if by magic forces, one discriminating chain of the Treaty of Versailles after the other dropped under Hitler's leadership, and how Germany was about to regain her place in the family of nations, which she had had to forego for such a long time. Does it not actually almost resemble a miracle how the foreign policy conducted by my client succeeded in cleverly exploiting the foreign political constellations and incidents which occurred in the period of the following years, and how it succeeded by peaceful ways and means in removing, one after the other, all the regulations of the Versailles Treaty which gagged Germany in her foreign political position; the Western Powers who had up to that time insisted upon exact compliance with the most unimportant regulations of the Treaty of Versailles, now tolerated everything quietly and could not rise above protests on paper. Is it not actually almost grotesque that from 1933 on the same people who in former years had retaliated against the slightest nonfulfillment of the obligations of the reparations by a democratically governed Germany with military means, like the occupation of the bridgeheads on the right side of the Rhine and the occupation of the Ruhr area, suddenly reacted only by meaningless protests to measures on the part of Germany which they presumably considered violations of the most important treaties, like armaments and the remilitarization of the Rhineland, and that they did not even think of offering serious resistance? But did this not also necessarily tend to increase Hitler's national popularity, his respect among the large masses, their readiness to follow him and their faith in him, and to make the people blind toward the measures applied within the country, which were gradually becoming more and more severe, toward the gradual throttling of cultural, artistic, and intellectual liberty, the free expression of opinion, and criticism, and toward the anti-Semitic measures. Even the bloody incidents of 30 June 1934 were hardly able to affect this attitude, and in some respects resulted in the contrary. For after the extremely clever explanation which Hitler gave them, these things could not but appear to the people as a purely internal affair of the Party which served to purge the Party from impure elements, and were not only bound to strengthen confidence in him, but also to remove any doubts and misgivings about him and his authoritarian state leadership, which had already arisen here and there. And the fact that the murder of high-ranking generals did not arouse any reaction whatsoever in the people actually only proves how little the attitude of the people was militaristic. Although in this Trial the Prosecution reproaches the entire German people with such emphatic indignation for not having revolted and risen up unanimously against this restraint and enslavement, the excesses and frightfulness of the concentration camps, against the persecution of the Jews, the following must be made clear with all emphasis: The gagging of cultural and intellectual liberty primarily and chiefly affected the upper class intelligentsia, which were relatively weak in number in relation to the entire population, and it was therefore hardly felt by the total sum of the people, because on the other hand Hitler took care to a very great extent to satisfy the needs of the masses by popular and inexpensive, in many cases free, theaters and movie performances and concerts, by the presentation of public dramas, and by other arrangements. What consequences the gagging of the intellectual upper class was bound to have, was not and could not be readily realized by the great masses, because they were kept completely busy with their work and the manifold other diversions.

But with respect to the concentration camps and the cruelties committed in them, I consider it my duty to state once and for all, for the honor of the German people: It is not true that the great majority of the German people, up to the last period of the war, had any knowledge about what was going on in the concentration camps. An assertion to the contrary can only be made by someone who has no idea of the actual conditions in Germany, about the cunningly devised system of keeping conditions in the concentration camps, and even

the existence of most of them, a secret. After all, how could it have been possible for larger groups of the people to have learned about the conditions in the camps? The Prosecution itself has tried to prove here that only a very small percentage of concentration camp prisoners were set free again, and those who were set free had to bind themselves in writing, under threat of capital punishment, to keep absolutely silent about their experiences during their imprisonment. They knew that if they violated these obligations and the Gestapo became informed of the fact they would forfeit their lives. I have myself been faced in my practice with a number of liberated concentration camp prisoners, but I have not been able to induce any one of them to speak and it was the same with many others. And if one or other of them did tell anything, his audience was careful not to repeat it, because they knew that they incurred inevitable arrest and internment in a concentration camp if the Gestapo should become informed of the fact. When in the course of the war particulars concerning concentration camps slowly transpired, most German cities were already under the hail of Allied bombs. It is admittedly only too human that faced with the horror of daily air raids the populace should have harbored no thoughts for the fate of concentration camp internees, but rather for their own fate and that of their kinsfolk, and for sheer life, for existence. And lastly, let me ask you, Gentlemen, who should have revolted, who should have risen up with violence against the domination of Hitler and the Party? Since the outbreak of war, since the autumn of 1939, the flower of the male population was under arms and fighting a hard battle at the front. A revolution cannot be made by children, women, old people, and more or less disabled or feeble men. And who was going to take the initiative, who was going to lead it? No revolution has ever yet been carried out by leaderless masses. Always and everywhere there must be leadership to guide and lead the masses and manage them. A levée en masse, especially when undertaken by an unarmed populace against an armed and organized power, is as doomed to remain a hopeless issue in the internal sphere as it is in war. The hopelessness of a popular rising or revolt is clearly conveyed by the fact that the conspiracy of 20 July 1944 failed, long prepared as it was with every conceivable precautionary measure, by real leaders enjoying wide popular support. The fact of this conspiracy alone, however, proves one thing: that the French prosecutor, M. De Menthon, is not right when, in his very brilliant and interesting address on 11 January 1946, he represented the abhorred National Socialist ideology and its glorification of race and German racial superiority over every other nation on earth as the expression and supreme product of the German mind and of its true nature, and names Fichte and Hegel as heralds of this development: Fichte, one of the greatest and noblest champions of Christianity, Christian ethics, and morals, is worlds removed from this National Socialist ideology. And how can anyone so much as name such an ideology in the same breath with Hegel, whose philosophical system was perhaps the most idealistic of all systems, who saw in the state the union of every moral force and purpose, to whom the state appeared as the materialization of the notion of morality in a manner reminiscent of the antique ideal, as something divine on earth. And the French prosecutor forgets that it was the German nation which produced a Kant, whose imperishable doctrine of the categorical imperative, except for Christian ethics, is probably the profoundest and most august expression of the moral principle of all times. And he is mistaken when he brings Nietzsche, the unique thinker who stands alone in the whole German spiritual universe, and his longed-for superman, into any relation whatsoever to the ideology of the National Socialist leaders. He also is worlds removed from them. No, Gentlemen, these spiritual heroes of the German nation have nothing in common with Nazi ideology. The latter stands, in truth, in the sharpest contradiction to real, genuine German thought and sentiment, the real character and dispositions of the German nation and, most of all, its attitude toward the other nations of the world. For this nation has never assumed itself to be better or more august than other nations. Neither was it ever possessed by a desire to destroy other nations. It is, above all, ignorant of hatred and revenge. The great tragedy of the relations between the German and the French nations is precisely that the latter has always refused to understand that the German nation has not, like France from the war of 1870 to the World War, been possessed by the thought of revenge, nor obsessed, even after Versailles, by the reconquest of Alsace-Lorraine. The idea of Pan-Germanism, of the Greater German Empire, has never, even in the period of greatest enthusiasm for Hitler, stirred any echo in the German nation despite the undeniably kindred

example offered by the Pan-Slavic doctrine and its enthusiastic reception by the Slav populations And these very ideologies, preached by the spiritual leaders of the Party, immediately determined and fortified the opposition, first in the intellectual circles and classes of the German nation and then in other classes and in the very ranks of the Party, as a result of further constraints and limitations of personal freedom. For those reasons the nation in its overwhelming majority was by no means inflamed by the war initiated by Hitler in the summer of 1939. What the nation's frame of mind was like as early as the autumn of 1938, I take the liberty of illustrating for you, Gentlemen, by a minor personal experience on 25 or 26 September 1938.

I happened, on this day, to have my car held up in a street leading to one of the large thoroughfares running south out of Berlin, because the whole street was jammed with vehicles. When I asked a common woman of the people, who happened to pass by, the reason for the traffic jam, she answered, "They are going to war down there," with such an expression of abysmal despair and horror that I was chilled. Such was the attitude of the population toward war, an attitude likewise evidenced by the fact that the departing troops were by no means hailed and cheered by enthusiastic crowds, but were gazed at with dull, frightened eyes. And if you ask me why the nation did not then rise up and revolt, you will find the explanation in what I have said before. As a nation accustomed to be led and to centuries of obedience, the German nation followed once again the order of the leader which it had raised to power. As a nation slowly but surely fettered by this leadership, it had likewise no possibility of a spontaneous, unprepared and unguided uprising against its leaders. Such a contingency could only occur as the pressure of war became ever more stringent, and when conscientious men in leading positions concurred in the attempt by slow and determined work, in order to put an end to the folly of Nazi domination and resulting war, and to save the German nation from an otherwise certain catastrophe. Nevertheless, Providence denied success to the attempt. But, I repeat, the very fact of the attempt, its support by wide circles of the nation and even of the Party, definitely proves that the Nazi ideology, which clearly governed politics since 1938, was neither in keeping with the real character of the German people nor with their nature, talents, soul, and mentality; neither was it engendered by them, but rather it was foreign and naturally opposed to them.

But there were not only the men connected with 20 July 1944 who had striven to do away with Hitler and the whole National Socialist domination. There were other men who were determined to reach the same goal, if by different methods, and had already taken the first steps to that end. As you heard in witness Ströhlin's testimony, the Defendant Von Neurath was one of them. How could it have been otherwise with this offspring of an old family which has given many a trustworthy civil servant to its Württemberg home; whose whole life, inspired by the spirit prevailing in his family home, has been filled with the most ardent patriotism and devotion to his nation, whose entire aspirations were directed toward the exclusive purpose of placing all his strength and all his power, all his talents and capacities, at the service of his nation's welfare, and to subject and, indeed, sacrifice his personal interests to it.

[A recess was taken.]

DR. VON LÜDINGHAUSEN: Born as a scion of an old family which gave its small home state Württemberg so many loyal high government officials, the Defendant Von Neurath grew up with a simple and strict education in a parental home filled not only with a real Christian spirit and true love for mankind, but also with an ardent, devoted love for his German people and fatherland. From his tenderest age and during his entire life his thoughts and actions had implanted in him the desire and will, the holy duty, to place all his powers, all his ability, all his gifts and capacities at the service of the welfare of his people, to subordinate and even sacrifice

all his personal interests to this. But, and this must certainly be emphasized in this place, aside from this aspiration there was alive in him and woven into his being in an equally strong degree a deep religious feeling, love of the truth and love of mankind that made him from the beginning adverse to the use of any form of violence against his fellow men not only in his private life, in his relations with his fellow men, but which ruled rather to the same extent his entire official activity, even after the Treaty of Versailles. His acts bore the stamp of this feeling and it became the law governing his official dealings as a representative of the Reich in other countries, as well as Foreign Minister and lastly as Reich Protector of Bohemia and Moravia.

Not only by his conciliatory amiability, his skill and demeanor, so understandable in a man of his origin and education, but also primarily through the love of peace and sincerity which permeated all his actions as a diplomat and statesman, he won the unlimited and sincere respect and sympathy of all people with whom he came into contact the world over, even of his political opponents. As unequivocal proof of this fact, the truth of which, Your Honors, may be confirmed by your own diplomats, it will suffice to refer to the fact that, as you know from the sworn affidavit of my client, King George V and King Edward VIII of England received the defendant in private audiences on the occasions of his presence in London in 1933 and 1935; that the British Government in the summer of 1937 and again in 1938, when he was no longer Foreign Minister, invited him to visit England for political discussions, and finally, that on his sixty-fifth birthday on 2 February 1938 the entire diplomatic corps called on him to congratulate him and to express through Monsignore Orsenigo, who at that time was *doyen,* its thanks and its appreciation for the reasonable and understanding manner in which he always discharged all his duties. Do you, Your Honors, credit your own diplomats and statesmen with so little knowledge of human nature, so little experience and knowledge of the world that in the course of the defendant's 6 years' activity they would not have found out, if the assertion of the Prosecution were true, that Herr Von Neurath had knowingly let himself and his good reputation be used as a covering shield by the Nazis, and that all his statements and assurances as Foreign Minister were mere camouflage, that is to say, a deliberate deceiving of the whole world?

In this connection, it may well be pointed out as quite obvious that such old and experienced democracies as England, America, France, as well as the Vatican, had delegated to the post of Ambassador in Berlin, the most important post at that time, their cleverest and most experienced diplomats. And I am tempted to assume that the Prosecution possibly did not realize quite clearly

what a dubious compliment they paid to their own diplomats by their assertion about the defendant, when they produce in proof of this assertion only the highly fantastic report of the American Consul Messersmith. I am moreover unshakably convinced that you, Your Honors, based on the very reason of your long judicial experience, have far too much knowledge of human nature not to see at first glance that my client, by his entire personality is absolutely incapable of such a perfidious and untruthful way of acting, let alone capable of play-acting to such an extent that for 6 long years he could have fooled the ablest and most experienced diplomats in the whole world. A man like the defendant, who for 60 years has led an honorable and absolutely decent life, would never in the world at the end of such a life have lent himself to such a disavowal and negation of all that he had so far held highest. That would be contrary to personal experience.

And on the same level stands the Prosecution's assertion that the Defendant Von Neurath, by joining and remaining in Hitler's Cabinet, served as a fifth columnist in the conservative circles of Germany for the express purpose of winning them over to National Socialism. This slandering of the defendant which, moreover, was brought forward without any attempt of proving it, is contradicted by the sworn statements of all witnesses and the affidavits submitted, which unanimously state that the resignation of the defendant from the office of Foreign Minister was viewed in just these circles with the greatest dismay and concern, because these circles considered that this withdrawal of the defendant from the Government was in itself a sign that from then on his pronounced peace policy would be replaced by another more belligerent tendency in foreign policy, which was quite rightly considered as a national calamity. For, like everybody else, they shared the conviction of Reich President Von Hindenburg that Herr Von Neurath was the exponent of the peaceful foreign policy of the Reich and the guarantor of a consistent continuation of this peace policy against any possible, undesired aggressive experiments by Hitler and the Nazi Party and that for this reason the Reich President stipulated that the defendant should remain in the Cabinet as Foreign Minister when Hitler was called to the Reich Chancellery.

This fact is confirmed beyond doubt by the sworn statements of all the witnesses heard, as well as by the carbon copy submitted by me of the letter of the witness Dr. Koepke of 2 June 1932 to Ambassador Rümelin, Neurath Document Book 1, Exhibit Number Neurath-8, and the affidavit of Baroness Ritter, Neurath Document Book 1, Exhibit Number Neurath-3.

But the latter proves also at the same time how unwillingly and after how long a struggle the defendant finally decided to accept this call and, therefore, supports the defendant's own sworn

statement that he only decided to do so after the Reich President, whom he so highly venerated, appealed to his love for his country and reminded him of the promise he had made 2 years before not to leave him in the lurch whenever he, the Reich President, needed him.

There is certainly no need for further proof for the utter emptiness and inaccuracy of the further assertion of the Prosecution, also submitted without proof, that the defendant had used his position, his reputation, his connections, and his influence to lift Hitler and the Nazi Party into the saddle, and to help them to secure supreme power in the Reich. Therefore, I hardly need to refer again to the statements of the Defendant Göring and other witnesses, particularly Dr. Koepke, from which it appears beyond doubt that at that time there were absolutely no relations between Hitler and the Nazis and the defendant, and, therefore, even less could the defendant have taken any part in the negotiations which took place before Hitler's call to the chancellorship.

Love for his country, a strong sense of responsibility, deepest concern about the weal and woe of his people and his promise not to leave Reich President Von Hindenburg in the lurch in this time of need, these were the only reasons which moved this man to leave the post of Ambassador in London he had come to like so much, to assume the office of Foreign Minister of the Reich at that critical and fateful hour, and to accept the task assigned him by the President of the Reich to continue to guide the foreign policy of the Reich in a peaceful manner, even perhaps against the will of Hitler.

The Defendant Von Neurath can claim rightly that he carried out this grave task at all times with all his strength and with the full allegiance of his personality, even after the death of Reich President Von Hindenburg, up to the time he was forced to admit that this task was beyond his strength, that Hitler no longer let himself be influenced by him but had decided to pursue a line of foreign policy along which the defendant, owing to his inmost convictions and his personal point of view, could not follow.

Up to 5 November 1937, the date of the famous speech of Hitler to the commanders of the various branches of the Armed Forces, the Defendant Von Neurath remained at his post, in the most faithful performance of his promise to the Reich President Von Hindenburg, even after the death of the latter. By reason of this loyalty to the deceased Reich President, he endured the odium, in many cases concerning Hitler's domestic politics, of having been compelled as a member of the Reich Cabinet to allow in silence things to happen which were contrary to his own convictions, which did not agree with his views and even were in direct contradiction to them. It was not in his power to prevent them. So he was forced to be satisfied with trying as far as possible to mitigate their effects and

consequences, as you could see from the affidavit of the Bishop Dr. Wurm, Neurath Document Book 1, Number 1, and the statements of the other witnesses heard in this connection.

The reproach of the Prosecution that he did not make such cases an excuse to lay down his office of minister, but that by remaining in office he had consciously approved and abetted them, is entirely irrelevant. The first law governing his actions was the carrying out of the duty assigned him by President Von Hindenburg, to secure the continuance of the Reich's peaceful foreign policy. He would have broken his word had he resigned his post as Foreign Minister before this was accomplished or before there was no possibility of its accomplishment. What person thinking objectively could bring himself to reproach him regarding this, or even identify him with the Nazis, as does the Prosecution?

But this attitude of the defendant, however, is the only reason why he did not refuse, as did Minister Von Eltz-Rübenach, his nomination to the rank of honorary Gruppenführer of the SS in September 1937 and the presentation by Hitler of the Golden Party Badge at the cabinet session of 30 January 1937, which facts are made a reproach by the Prosecution and a proof of his alleged National Socialist sentiments. For as the statement of the Defendant Göring indicates, such a refusal by the Defendant Von Neurath, as was the case with Von Eltz-Rübenach, would have been resented by Hitler as an act of rudeness which would without any hesitation have been answered by the immediate dismissal of the defendant. But this was just what the defendant wished to avoid, for at that time he was still in a position to carry out to the full extent the task assigned him by the President of the Reich—to be the guarantor of peace in the foreign policy of the Reich, because he was fully justified in his conviction that his influence over Hitler was still strong enough to insure his agreement with the peace policy he was then fostering.

The evidence submitted proves beyond doubt that in both cases it was not a question of actual membership of the SS and the Party, but only a matter of uniform, an external whim of Hitler in regard to the men of his retinue during Mussolini's impending visit; and secondly, it was a matter of a visible recognition for the services rendered by the defendant as Foreign Minister, which at the same time implied a proof of the unlimited agreement of Hitler with the peaceful foreign policy followed by the defendant—in other words, an entirely normal awarding of decorations as is practiced in every state. The conferring of decorations in the ordinary sense was not yet possible because at that time they did not yet exist in the Third Reich. That the defendant in both cases nevertheless expressed at once that under no circumstances did he wish to proclaim his entry or admission into the SS or the Party by accepting this decoration,

intended by Hitler as a mark of honor, has been proved by his affidavit. Moreover, he never took the oath required of a member of the SS; he never exercised even the slightest activity in the SS and wore the SS uniform only twice in his life at Hitler's explicit request. This has also been confirmed by his affidavit.

Both cases actually concerned a personal sacrifice of the defendant to the promise he had given Hindenburg. If the Prosecution consequently believe it must infer from these two incidents a National Socialist conviction from the defendant's agreement with Hitler's ideas and his entire governmental system, it has altogether missed the mark. And the conferring of the Order of the Eagle supports the Prosecution's assertion even less. For this Order was not conferred on him nor on the Defendant Ribbentrop as a personal distinction for services rendered, but it was merely conferred on them in their positions as Reich Minister for Foreign Affairs and Reich Protector as such. This was done in order to give this Order, which was intended to be conferred on foreign personalities only, a special significance in the eyes of people abroad, which is even shown by the fact that it had to be returned by the defendant when he resigned.

The presentation of evidence, through the affidavits of all the witnesses examined in this connection, unequivocally resulted in the fact that the defendant's attitude toward the National Socialist system and its maxims were negative from the beginning to the end, and that, therefore, certain Party circles continually bore him ill will and opposed him. For these circles knew quite well that the Defendant Von Neurath, as is proved by his own statement and by those of the witnesses Dr. Koepke and Dr. Dieckhoff, energetically and successfully opposed to the last day all attempts to introduce members of the Party as officials into the Ministry of Foreign Affairs, and in so doing, open it to Nazi influences; and that in spite of various intrigues he could not be dissuaded from his definite peace policy. On account of his inviolable sense of responsibility and his patriotism, the defendant also took upon himself this enmity and these intrigues, endeavoring only to conduct German foreign policy along those lines, which were prompted by his convictions, formed by long years of successful diplomatic activity. He was fully convinced that when he resigned his office it meant the collapse of the last bulwark against the infiltration of members of the Party and of the Nazi spirit into the Reich Ministry of Foreign Affairs. It also meant that the danger of renouncing the peace policy embodied in his policies was imminent, which indeed came true on his resignation on 4 February 1938.

It was therefore for the defendant the bitterest disillusionment in his official life when he was forced to recognize in Hitler's speech on the ominous day of 5 November 1937 that all his efforts, his

entire struggle, all his personal sacrifices during the last 5 years appeared to be in vain and that his influence with Hitler was broken, that the latter had decided to abandon him and the policy of peace and agreement advocated by him, and, if the occasion arose, to make use of military means in order to carry out his more than Utopian plans set forth in this speech. The recognition struck him like a bolt from the blue, since up to then nothing had intimated that Hitler might no longer agree on the peace policy advocated by the defendant. The heart attack which he had the next day may testify to the fact how seriously he felt this blow, which seemed to shatter all his hopes, all his efforts to protect Germany from the dangers of this foreign policy, from military entanglements, and a possible, nay probable, catastrophe.

But in consciousness of his responsibility, his burning concern regarding the future of his people, before drawing the last self-evident conclusions and resigning, he considered it his duty to try once again by a very detailed and serious conversation to dissuade Hitler from persevering in his fatal plans and intentions. Yet, having to recognize from this conversation that Hitler's decisions were unalterable, he did not hesitate for one instant to tell Hitler that he had decided under no circumstances to take part in this pernicious policy, and that for such a foreign policy Hitler must find another foreign minister. Hitler accepted his resignation by his letter of 4 February 1938.

I ask you, Gentlemen, is there a more unequivocal and clearer proof than this resignation to show the absolute inaccuracy, the entire hollowness of the charges made against my client at this Trial of having assisted or having wished to assist by his foreign policy in the planning and the preparation of wars of aggression which took place one and a half years later? Is there a more unequivocal and clearer proof of the absurdity of the application of the principles of conspiracy to the acts and deeds of statesmen and, in particular, of the defendant? Finally, is there a more unequivocal and clearer proof of the absurdity of a retrospective judgment of the policy of states, constituting as they do here one of the main bases of the whole prosecution?

All of you, Gentlemen, who are here to do justice, know from your own activity and experience at least as well as I do, how dangerous conclusions *a posteriori* are regarding the actions of a man, regarding the thoughts, views, and deeds of this man, several years removed in time. *Tempora mutantur et nos in illis.* Each of us has surely experienced the truth of this sentence more than once in his life. Convictions and views, intentions and resolutions, which we have held and carried out at a certain time, have in the course of years become changed and altered, partly because of the transformation of one's own personality, partly because of exterior

circumstances, or change of conditions. Does one really wish to expound this thesis and draw a conclusion retrospectively, that the former views, assertions, and actions were only camouflage, and that the person already intended to do and was determined to do what he did years later under quite different circumstances? Why should you demand a different standard of a politician, a statesman? He, too, is only a human being and is subject to the same changes of ideas, opinions, and intentions as others. He is even more acutely subject to exterior influences, exterior conditions, to certain imponderable circumstances than the ordinary man. Just one example for this: What would you say to a man who would dare to assert in earnest that Napoleon Bonaparte, when he went to Paris during the great revolution, or later on when taking over the supreme command of the French armies in northern Italy, already had the plan or even the intention of making himself in 1804 Emperor of the French and of marching on Moscow in 1812? I believe that whoever adopted this attitude would stand alone in the world. And an able dialectician with more or less apparent logic and justice could still base this opinion on the historical development of events, like the Prosecution with regard to their opinion that Hitler, at the time of his assumption of power, yes, already with the presentation of the Party program in 1920, had not only the intention but even the plan ready for conducting his later wars of aggression, and everything which Hitler and the Nazis or his collaborators did, from the very moment of the assumption of power, both in domestic and foreign politics, was the conscious preparation for those wars of aggression.

Your Honors, I believe whoever follows the Prosecution and their principle, which still stands on a very weak basis, and their retrospective consideration of things, overrates too highly the spiritual and statesmanlike abilities, not only of his satellites but also of Hitler himself. Because, after all, it is in any case already evidence of a certain mental limitation if a person, and particularly a statesman, founded his policy on the basis, as Hitler indisputably did, that the governments and statesmen of the remaining states would again and again let themselves be fooled and bluffed by the same methods, that they would again and again stand for actions which they considered to be violations of treaties, and that they would watch quietly until Hitler believed himself to be ready to attack the whole world by force of arms. And is it not all the more proof of a mental limitation if a statesman in this way underestimates the abilities, astuteness, and the weapons of his opponents as Hitler did? In addition to all this, however, there is something which must not be underestimated either; that is Hitler's desultory way of thinking and the thought processes resulting in snap decisions. I do not consider it necessary to have

to give you any further evidence of these, as they are generally well known. Hitler, however, was also a man who did not stand for any argument or any resistance, and who on encountering obstacles which he could not remove by an emphatic word, forthwith changed his plans and intentions and made contrary decisions, the very opposite of those he had formerly cherished.

All this speaks against the intention of planning and preparing wars at the time of the seizure of power, or even in previous years, which the Prosecution have ascribed to Hitler. The impossibility of this charge is further apparent, if one considers the following: It is indisputable that Hitler not only testified his love for peace in public speeches, addresses, and diplomatic notes on several occasions from the day of the seizure of power until 1937, as can be seen from documents presented by me, but he also made positive suggestions for the practical limitation of armament of all states, including therefore Germany, from which it can be readily seen that he declared himself satisfied with a reduced land and air power in proportion to the others, which from the very beginning excluded any aggressive war against the other states. And now just suppose that one of these offers of Hitler had been accepted by the remaining states, then the war of aggression which Hitler supposedly had been planning and preparing for years would never have been possible. All efforts, work, and expenses in connection with it would have been in vain. Or do you perhaps consider it possible that Hitler looked ahead and figured that his offers would be refused, and that he only made them in this realization? Then he would really be an almost demoniacal genius, a prophetic seer of the first rank. Do you really wish to assume from it the claim of the Prosecution that aggressive war of the year 1939 had been planned a long time before the seizure of power? And even if you should answer this question in the affirmative for the person of Hitler, do you also ascribe such a gift of second sight to his collaborators, his servants, yes, even all Party members? To ask this question is to answer it in the negative. With this question alone also falls the painfully constructed and artificial structure of the motivation ascribed by the Prosecution. And along with it falls also the classification of the whole charge, and in particular the coresponsibility of all collaborators of Hitler generally under the conception of conspiracy, at least until the period of time when it could be recognized by the most extensive circles of his followers that Hitler finally wanted war and had decided on it. Simultaneously with this, however, the unconditional accuracy of the postulate advanced by me at the beginning of my statements becomes evident after examining the subjective joint guilt of every single defendant, after the denial of the coresponsibility of each individual only from the fact of his participation in the actions which are considered

as preparations for a war of aggression by the Prosecution at any period of time, simply without examination and investigation of his knowledge of Hitler's aims and intentions. To disregard this postulate, as the Prosecution do, would be to contradict every sense of justice, the most primitive as well as the most highly developed, in every nation on earth. The *summum jus* sought in this Trial would become a *summa injuria.*

The best evidence of the truth of this assertion is personified by the Defendant Von Neurath himself. Is it not pure folly, is it not *summa injuria* to accuse this man of connivance in planning and preparing wars of aggression, this man who deemed it his exclusive duty, a duty to which he has made great personal sacrifice, to prevent every form of entanglement involving war—and who, the moment he realized that the task was beyond him, forthwith resigned his function and demanded his dismissal? The Prosecution obviously feel this themselves, otherwise they would not have brought as evidence of the defendant's alleged joint culpability his presence at Hitler's conference on 5 November 1937, wittingly omitting, however, that it was this conference and Hitler's deviation from a peace to a war policy which caused the defendant to refuse further collaboration and thereby make it clear that he never concurred in the past and was not prepared in the future to concur in or approve of, the planning, preparation or waging of a war of aggression. Thus, every charge of guilt made in the Indictment against the Defendant Von Neurath is void, once and for all. For should he be further accused of having broken international treaties while responsible for the conduct of German foreign policy, it must be pointed out in answer that according to the clear wording of the Charter, the breach of international treaties does not constitute a punishable crime in itself, and becomes a punishable crime only when it serves the purpose of preparation for wars of aggression. If such a breach of treaty serves this purpose, it must be intended to do so by its author, or at least its author must be conscious of the fact. That Defendant Von Neurath had no such intention, nor indeed the faintest knowledge of the above implication, is quite clearly proved by his resignation from the office of Foreign Minister. But I shall moreover demonstrate to you that even the charge of violating or breaking international treaties is without foundation.

When, on 2 June 1932, the Defendant Von Neurath took over the Foreign Office at Hindenburg's request, there were two questions that far surpassed in importance every other European problem and demanded an urgent solution; they were the problem of the German reparations and the problem of the disarmament of the victorious powers and of German equality of rights, a factor which was inseparable from it.

The defendant and Von Papen who was Reich Chancellor at the time managed to treat the first question satisfactorily at the conference held by the powers in Lausanne on 10 June 1932, a few days after the defendant's assumption of office. At the closing session of the conference on 9 July 1932, Germany was freed of the financial servitude established by the Treaty of Versailles of a single final payment of 3 milliard marks. The Young Plan was obsolete, and only Germany's obligations deriving from the loans granted her remained in force. Thus Part VIII of the Treaty of Versailles in which the reparation obligations were contained by virtue of Article 232 became obsolete for Germany. The first gap was made.

Matters were different with regard to the disarmament problem. This arose from the obligation for disarmament imposed on Germany according to Part V of the Treaty of Versailles which, I presume, is well known. In case of its fulfillment, the preamble to this part likewise prescribed disarmament for the highly armed victorious nations in reciprocity. Germany had disarmed. It had already fully met its obligations in 1927, an uncontested fact which the League of Nations also had expressly recognized. This was the basis for Germany's request for reciprocal compliance by the other partners to the treaty, as provided for in the preamble to Part V. And Germany had announced its request for disarmament by the highly armed states and in conjunction therewith recognition of her equality of rights a considerable time before the defendant took office. However, during the so-called Disarmament Conference the negotiations not only had made no progress by the time the defendant took over the Foreign Office, but just at that time, the summer of 1932, they had become considerably more difficult. In view of the short time allotted for my disposal, I again refer for details to the German memorandum of 29 August 1932—my Document Book 2, Exhibit Number Neurath-40—and to my client's interview of 6 September 1932 with a representative of the Wolff telegraph office, to be found in the same document book under Exhibit Number Neurath-41. Lastly, I should like to refer to the defendant's declaration of 30 September 1932 before the German press, submitted to the Tribunal under Exhibit Number Neurath-45, my Document Book 2.

These declarations, all of which were made preparatory to the resumption of negotiations by the Disarmament Conference on 16 October 1932 and in order to demonstrate the seriousness of the situation to the world and to the Western Powers, prove clearly and unequivocally the great, fundamental tendency of the defendant's ideas, his trend of thought and intentions as a human being, as a diplomat and as Foreign Minister, which dominated his entire policy from the beginning until his resignation, and which can be

summarized in the statement: To avoid and prevent the settling of differences through force of arms; to realize all goals and tasks of German foreign policy by peaceful means only; to reject war as a means of policy; in a word, to strengthen and safeguard peace among the nations.

It is the same tendency which M. François Poncet, the former French Ambassador to Berlin, so eloquently referred to as a characteristic of the defendant in his letter—which I submitted to the Tribunal as Number 157 of my Document Book 5—and which was unanimously confirmed by all witnesses and affidavits.

While the opening of negotiations at the Disarmament Conference started with what really might be termed an affront to Germany, which caused the head of the German delegation to declare that under such conditions it would not be possible for him to continue to attend the negotiations, the Western Powers in the end could not close their minds to the ethics of a policy inspired by such tendencies, and following a suggestion by the British Government, on 11 December 1932, the well-known Five Power Agreement was concluded (see my Document Book 2, Exhibit Number Neurath-47a) in which England, France, and Italy, with the consent of the United States of America, recognized Germany's equality of rights. On 14 December 1932, the main committee of the Disarmament Conference expressed its satisfaction in acknowledging this agreement, and the German delegate expressed his readiness to resume participation in the deliberations of the conference, stressing also that the equality recognized on 11 December 1932 in regard to Germany was the *conditio sine qua non* for this continued participation by Germany. It seemed that a great step forward had thus been made in the path leading to an understanding on the question of disarmament.

However, things were to take a different turn. Immediately following the opening of the conference meeting again in Geneva on 2 February 1933, serious clashes occurred between the German and the French delegations, in the course of which M. Paul Boncour, the French delegate, even went so far as to declare the Five Power Agreement of 11 December 1932 legally invalid because it involved five powers only. To the astonishment not only of Germany, the cause for these increasingly acute differences was the fundamental change in France's attitude with regard to the basic question of the entire armaments problem laid down in the French plan of 14 November 1932 as a basis for these negotiations. For, contrary to the stipulations of the Treaty of Versailles and its own attitude heretofore, France suddenly took the position in this plan that armies composed of professional soldiers with a long period of service were aggressive in character and consequently meant a threat

to peace and that only armies with a short period of service were defensive in character.

I regret that for lack of time I must desist not only from referring at greater length to the details of the French plan, but also to the sequence of the differences which became more and more critical between Germany and the other powers. I must assume that they are known and confine myself to stressing that the new French thesis, which the Disarmament Conference adopted as its own, was clearly and unequivocally directed against Germany and the Reichswehr as it had come into being in accordance with the disarmament stipulations of the Treaty of Versailles, a thesis which, if it was to be carried into effect, would have required the transformation of the Reichswehr into a militia army with a short period of service, thus signifying a still further reduction in its armament, inadequate as it already was for an effective protection against attack. The establishment of this thesis, however, also proved clearly that France was unwilling to disarm, which was also shown by statements of the French representative himself.

This new plan of France, as also her attitude particularly in the question of the ratio in the reduction of the individual armies, was merely a new expression of her old thesis, first security, then disarmament, which brought about the failure not only of the previous negotiations but also that of a new plan of mediation, the so-called MacDonald Plan, proposed by England to prevent the threatening break-down of negotiations.

Germany's reference to consideration for her own security and her demand for general disarmament as a result of the right to equality by reason of recognition accorded her on 11 December 1932 were received by the other parties as a provocation, indication being given that, should negotiations fail, responsibility would rest with her.

In the interest of the clarification of these things and of the presentation of the increasing gravity of the whole situation before world publicity, my client felt it necessary to publish an article in the well-known Geneva periodical *Völkerbund,* on 11 May 1933—Neurath Document Book 2, Number 51—in which he discussed the result which the conference had so far achieved, described the German attitude in detail, and finally established that the German demand for the practical realization of the equality of rights of Germany by disarmament of the heavily armed countries was wrecked by the lack of will of those countries to disarm, and that Germany, therefore, in the interest of her own security was forced to start completing her armament, should the general limitation and disarmament within the framework of the English MacDonald Plan not satisfy her justified demands for security.

This conclusion was wholly justified in view of the entire foreign political situation at that time. These aggravated events which had

intensified the crisis at the Disarmament Conference were only a small part, so to speak, of the expression of the international tension which prevailed since Hitler's assumption of power. Domestic events occurring in Germany were first observed abroad with astonishment, but also with a certain lack of comprehension.

Soon after Hitler had assumed power, on 30 January 1933, an opinion was formed abroad—the discussion of which would lead too far here—about the so-called German revolution, which made it appear a European danger not only to France and her allies but also to Great Britain as well. The fear of such a danger affected the attitude of the Western Powers at the Disarmament Conference to an ever increasing degree, where Germany's completely logical and consistent point of view was regarded as a provocation. But these worries of theirs, their insecurity in the face of the new Germany, led to even much more extensive measures and threats.

With England's consent France began military preparations in the first days of May 1933, placing the border fortifications—which had already been provided with increased garrisons during the winter—in a state of alarm by alerting the large camps in Lorraine, the deployment area of her army of the Rhine, and carrying out a large trial mobilization between Belfort, Mulhouse, and St. Louis, at which the Chief of the French General Staff, General Weygand, appeared in person. And at the same time the French Foreign Minister Paul Boncour ostentatiously declared in his speech on 12 May 1933 before the French Senate that, in view of the revolutionary explosions in Germany, Italy would have to be kept firmly among the group of Western Powers; and, in response to Germany's attitude at the Disarmament Conference, he added that Germany must adhere strictly to the Treaty of Versailles if she wanted to keep the Reichswehr. And these words of the French Minister, which could only be understood as a threat, were still further emphasized and confirmed by similar statements of the British Minister of War, Hailsham, and the otherwise so pacifist-minded Lord Cecil, in the English House of Commons; the latter even encouraged France to carry out further military operations. The situation was so strained that Europe seemed to be standing directly on the brink of a new war.

This increasing gravity of the situation, this obvious crisis which was leading Europe close to disaster is one of the basic reasons for the entire subsequent policy of the Defendant Von Neurath during the following years. Therefore, the question must be examined as briefly as possible, to see what consequences it was bound to have and did have, for German foreign policy, from the German point of view. One thing is undeniably clear. In the spring of 1933 Germany was in no condition whatsoever to fight a war; it would have been complete madness, a sheer desire for self-destruction, to fight

a war against the armies of France and her allies, which counted millions of men and were excellently equipped with the latest weapons of attack, to fight with the small Reichswehr of one hundred thousand men which had at its disposal no motorized weapons of attack whatsoever, no tanks, no heavy artillery, no military airplanes.

Fear of an imminent warlike attack on the part of Germany could, therefore, from the point of view of the Western Powers, under no circumstances be the reason for their position and attitude. The one plausible reason could lie only in the attitude of the Western Powers with regard to the question of disarmament as such, that is, in their unwillingness to carry it out, to continue to discriminate against Germany, to continue to refuse her the realization of her equality of rights and to continue to keep her down.

In this alone, in the eyes of the leader of German foreign policy, lay the reason for the final French and English proposals at the Disarmament Conference, which were unacceptable to Germany for reasons of justice as well as for reasons of her own security and her national honor. Because even in spite of Germany's equality recognized by the Western Powers in the Five Power Declaration, the French plan of 14 November 1932, as well as also the English plan of 16 March 1933, the MacDonald Plan, and the resolutions of the Disarmament Conference included therein, lacked practical realization of equality, even from the most objective standpoint.

What justly and objectively thinking person would reproach the German state leadership, if they drew their conclusions from all this, and recognized that this behavior of the Western Powers contained not only a violation of existing treaties and of the Treaty of Versailles with regard to disarmament, but also the will of the Western Powers to prevent Germany from fulfilling her demands justified by treaty, by force of arms if necessary, and furthermore to keep her as a second-rate state, and to refuse her the security guaranteed her also in the Treaty of Versailles?

Can you, Your Honors, reproach a state leadership which was aware of its responsibility towards its people, if this realization from now on had to be decisive for the continued direction of foreign policy? Because the highest duty of every state leadership, which is aware of its responsibility in foreign policy, is the securing and maintenance of the existence and the independence of its state, the regaining of a respected and free position in the council of nations. A statesman who neglects this duty sins against his own people. This realization should carry all the more weight because, on the part of Germany, nothing had happened which might have been interpreted as a threat against the Western Powers. On the contrary in his first program speech in a Reichstag still elected in accordance with democratic principles, Hitler had emphatically

declared on 23 March 1933, punctuated by unanimous applause, his will for peace, particularly emphasizing this with regard to France; and he confessed himself prepared for peaceful collaboration with the other nations of the earth, but emphasized also that as a prerequisite for this he considered necessary the final removal of the discrimination against Germany, the division of the nations into victors and vanquished.

To these declarations of his, however, not the slightest attention was paid by the Western Powers, although they corresponded throughout with the given conditions and might have contained anything but certainly no threat. Unfortunately, they were unable to effect a change in the attitude of the Western Powers and to prevent an acceleration of the crisis.

A discernible relaxation only took place when Hitler, under the influence of the Defendant Von Neurath, at the climax of the crisis, repeated once more to the world, with the greatest emphasis, his and the German people's will for peace in his great so-called peace address before the Reichstag on 17 May 1933—it is in excerpt form in my Document Book 2, Exhibit Number Neurath-52—and expressed his conviction that, as he declared literally, no new European war would be in the position to replace the unsatisfactory conditions of today by something better; the outbreak of such an insanity, as he described the war, would be bound to lead to the collapse of the present social and state order.

This speech of Hitler, whose honesty and sincerity cannot be denied according to the evidence, and whose power of conviction also proved irresistible to the Western Powers, effected a general relaxation of the situation; the danger of a new international war was averted, and the world took a deep breath. This, however, also marked the end of the isolation of Germany which had made for inner change and revolution, and German foreign policy gladly and with a sincere will took the opportunity for active collaboration in the political state gamble, an opportunity offered her by the suggestion of Mussolini to unite the great powers, England, France, Italy, and Germany, in a so-called Four Power Pact. This treaty, which was drawn up on 8 June 1933 in Rome and which was signed in the middle of June 1933 also by Germany, and which in its preamble also referred expressly to the Five Power Agreement of 11 December 1932, was to place the participating powers in such a position that, if further negotiations in a larger circle, as for example in the Disarmament Conference, should reach a stalemate they could meet at a smaller conference table. For Germany, the main motive lay in the fact that she again became an active member in the body of European policy in which she was participating as a partner with equal rights in an international agreement.

As a matter of fact, this pact was concluded at a time when a new international tension was already arising and increasing which again threatened to isolate Germany. This time it had its source not so much in the Disarmament Conference, the proceedings of which after the customary fruitless endeavors were again suspended on 29 June 1933 until 16 October 1933, as in the position of Germany and Austria in the World Economic Conference which opened in London on 12 June 1933. The Austrian Prime Minister Dollfuss made use of this conference to call the attention of the powers to an alleged threat to Austria's independence by Germany, in that he accused Germany of lending support to the Austrian National Socialists in their fight against his Government. Making the Austrian question the center of gravity for European policy and calling on the powers for protection against an alleged threat to Austria's independence by Germany—which the former considered a cornerstone in the construction of European power relations—he fanned the old embers into a new flame. What the mood was then in the summer of 1933 is shown in my Document Book 1, under Exhibits Number Neurath-11 and 12, reports of the defendant to Reich President Von Hindenburg and Hitler, dated 19 June 1933; but reference is also made to it in the speech by the defendant on 15 September 1933—Document Book 2, Exhibit Number Neurath-56—before representatives of the foreign press, which also comments on the consequences of such an attitude for the prospects of the proposed negotiations to be resumed by the Disarmament Conference on 16 October 1933, and which is reflected in his words:

> "Judging by certain indications the readiness of highly armed states to carry out disarmament obligations for which they pledged themselves today seems to be smaller than ever. Finally, there is only one alternative: Realization of the right to equality or else a collapse of the entire idea of disarmament, with incalculable consequences, for which responsibility would not rest on Germany."

This skepticism of the defendant with regard to the political situation in general, and prospects of the Disarmament Conference in particular, were only too well founded. For the new so-called Simon Plan—submitted even before the conference started by Sir John Simon, head of the English delegation, as a basis for negotiations—and to no less a degree the statement relative thereto made by Sir John, made it clear beyond doubt that the attitude of the Western Powers still continued to be the same as in the spring of 1933 and that they were even still less disposed to do justice to Germany's demand for an equality of rights. For Sir John declared in plain language that in view of the present nonclarified conditions in Europe, and considering the seriously shaken confidence in peace, a disarmament conference, even according to the pattern of the

MacDonald Plan, which Germany had declared unacceptable in the spring, was an impossibility.

This not only meant bringing an unjustified accusation against Germany—which had done no more than stand on the rights accorded it by treaty—but it also was a clear denial of Germany's equality of rights and of disarmament. As a matter of fact, this Simon Plan falls even farther short than previous plans in doing justice to Germany's rightful demand for equality of right and disarmament, that is, a balancing of all states' armament in accordance with one another, including Germany.

Time being too short, I once more have to refrain here from going into detail and must confine myself to pointing out that it meant an increased restriction and reduction of German armament in favor of the other nations. For it provided that during the first half of the 8 years' duration of the proposed disarmament, Germany alone—through the conversion of its Reichswehr into an army with a brief period of service—would practically be still further disarmed, subjecting herself, in addition, to an armament control by the powers, while the highly armed powers were not scheduled to begin disarming until the fifth year, and then only in terms of manpower reserve, not in terms of arms. These provisions demonstrated more clearly than ever that not only did the Western Powers not intend to disarm, but that they wanted to weaken Germany still more and make her tractable to their power interests. There was no more mention made of the fact that the Five Power Agreement of 11 December 1932 had agreed to recognize Germany's equality of rights.

It really should have been clear to the Western Powers as well that such a plan depriving her of a chance to participate in further negotiations at the conference was bound to be unacceptable to Germany from the outset. However, on the strength of the lessons which German foreign policy learned in the spring of 1933—when Germany came very near having the Western Powers threaten her with war because she was unwilling to renounce her just demands—nothing was left to her this time but to answer the new threat which this plan undoubtedly involved, not only by rejecting the plan but also by withdrawing from the Disarmament Conference as well as the League of Nations. Further negotiations during the conference under such conditions were deemed hopeless from the very start and could only result in a still greater heightening of contrasts.

It is difficult to understand why the Western Powers failed to foresee Germany's attitude and were surprised by her withdrawal from the League of Nations and the Disarmament Conference. In Hitler's speech, already referred to here, an appeal for peace,

delivered on 17 May 1933, he expressed in unequivocal terms that notwithstanding the sincere will for peace and further disarmament —provided it were mutual—on the part of the German Government and the German people, they would never consent to further humiliation and to renunciation of their claim for equality of rights but that if such were the demand they would rather assume the consequences without hesitation. Still more incomprehensible is the fact that in all earnestness the Prosecution place the blame for this withdrawal by Germany on its foreign policy, and that they believe they can find evidence of deliberate action for the preparation of wars of aggression; and this can only be understood by the fact that the Prosecution preserves complete silence on the events which led up to this withdrawal and thereby tries to create the impression that Germany's withdrawal occurred entirely without cause. The Prosecution's interpretation of the withdrawal as an action in preparation for war is contrary to objective history as becomes clearly apparent from the fact—which the Prosecution also passed over in silence—that concurrent with its declaration of withdrawal, the German Government, through Hitler's speech of 14 October 1933 as well as also through the speech of the Defendant Von Neurath of 16 October 1933, not only declared with all possible emphasis their unchanging desire for peace and readiness to negotiate in the case of any disarmament plan which would consider Germany's equality of rights, but tried to carry into practice this willingness to negotiate by submitting on her part practical proposals for general disarmament, as set forth in the memorandum prepared by my client and submitted to the powers on 18 December 1933 (Neurath Document Book 2, Exhibit Number Neurath-61).

The interview granted by the defendant to the representative of *The New York Times* in Berlin is an expression of the same endeavor. A government or a foreign minister that intends to prepare or even plan an aggressive war is hardly likely to make proposals for limiting or even reducing still further the armament of that country.

Diplomatic negotiations between Germany and the individual Western Powers which followed the memorandum of 18 December 1933 ended, as I may presume to be well known, with the note of the French Government to the English Government of 17 April 1934, which closed the door to further negotiations as proposed in an English memorandum of 29 January 1934 as well as another memorandum of the German Government of 13 March 1934, as this was fully stated in the speech of the Defendant Von Neurath on 27 April 1934 (Neurath Document Book 3, Exhibit Number Neurath-70).

The fact which appeared in the preceding discussions is interesting and must be emphasized here, that in their course an indisputable change was shown in relations between France and Russia, the further development of which became more or less authoritative, not only for German foreign policy, but also for the entire European policy in the coming years. The Russian representative in his speech to the Office of the Disarmament Conference on 10 April 1934 took the stand, contrary to the point of view always previously represented by Russia, that the task of the Disarmament Conference was to decide on a most wide-reaching reduction of armaments to provide maximum security, and though he admitted the failure of their disarmament efforts he did not however draw the conclusion therefrom that the conference had broken down, but on the contrary held that the creation of new security instruments of international law was the sole task of the Disarmament Conference, a point of view which was endorsed by the Russian Foreign Minister Litvinov on 29 April 1934. With this thesis Russia had adopted France's point of view: First security, then disarmament, and, beyond that, the door was opened to the increased armament of all nations from now on. It is evident how important this fact was in the light of the French-Russian Assistance Pact which was signed one year later, made for the re-establishment of German armed sovereignty and an increase in the armament of all the remaining states. A direct path leads from this declaration of the Russian Foreign Minister via the extensive negotiations during the summer of 1934 regarding the so-called Eastern Pact to the Franco-Russian Assistance Pact of 2 May 1935 and the Russian-Czechoslovak Assistance Pact of 16 May 1935.

The French note of 17 April 1934 with its categorical "no" signified the end of one epoch and the beginning of a new one in international policy. France finally made it clear that she was no longer willing to carry on with a general agreement among all states desiring a solution of the questions of disarmament and security, but decided to go her own way from now on. The reason for this lay obviously in the fact that she recognized or thought she had recognized that the most important of the participating powers, England and Italy, were no longer prepared to follow her unconditionally, and to continue to refuse Germany the equality of rights theoretically granted her on 11 December 1932. This was expressed through the far-reaching *rapprochement* of the English and Italian points of view in the English memorandum of 29 January 1934 and in the declaration of Mussolini to the English Minister Eden on 26 February 1934, which dealt with the clearly outlined German point of view in the memoranda of 13 March and 16 April 1934. A similar tendency was shown in the memorandum of the so-called neutral powers, namely Denmark, Spain, Norway, Sweden, and

Switzerland of 14 April 1934, and above all the speech of the Belgian Prime Minister Count de Brocqueville of 6 March 1934 (Neurath Document Book 3, Exhibit Number Neurath-66) showed the same tendency.

In this note of 17 April 1934, to which the Defendant Von Neurath referred in his speech of 27 April 1934 before the German press, he explained his attitude thoroughly and convincingly. France, as was soon apparent, finally abandoned the principles of the Versailles Treaty, the preamble to Part V which fixed in an unmistakable manner the general disarmament of all states of the League of Nations as the basis for the disarmament of Germany. The new French policy set up immediately after the note of 17 April 1934 soon made it known that she had decided to proceed along lines diametrically opposed to the basic idea of the Versailles Treaty regarding German disarmament.

On 20 April 1934 the French Foreign Minister Louis Barthou began his journey eastward, which took him to Warsaw and Prague. He first tried to prepare the ground for the resumption of diplomatic relations between the states of the so-called Little Entente with Russia, which so far did not exist, and thus prepare the way for the inclusion of the greatest military power of Europe on the side of France. He succeeded. Czechoslovakia and Romania, the most important states of the Little Entente, recognized and renewed diplomatic relations with the Russian Government on 9 June 1934. Thus France had made the first breach in the ideological and psychological opposition at that time felt by the European states against Soviet Russia, and the French Minister for Foreign Affairs, then on his second journey to the East, was not only able to gain the consent of all states of the Little Entente to the so-called Eastern Pact which France had long ago been negotiating with Russia, but subsequently was able to place it openly on the agenda of the International Policy Conference in London at the beginning of July. With this, as the Czechoslovak Minister for Foreign Affairs Beneš justly stated in his speech of 2 July 1934, a regrouping of the European powers was announced, which appeared capable of overthrowing to a certain extent all former relations on the continent.

Stanley Baldwin, who at that time was Lord President of the Council, had on 18 May 1934 already stated before the House of Commons that in view of the question of collective peace which of necessity involved the need for sanctions, England stood before one of the most difficult decisions in her history. He coined the phrase: Sanctions are war. England agreed at the beginning of July 1934, on the occasion of the visit of Barthou to London, not only to the Eastern Pact but in addition also to the entry of the Soviet Union into the League of Nations, which had been suggested by

France. On 18 December 1934 the League of Nations officially resolved to accept Russia into the League. Thus France had for the most part already reached her goal, the inclusion of Russia, the strongest military power, into European politics and indeed on her side as will shortly be shown.

In spite of this heralded change in European power relations, German foreign policy under the direction of the defendant not only continued calmly and consistently in its peaceful struggle for the practical recognition of German equality—even after the French note of 17 April 1934 which it considered disastrous—but also in its policy of peace. In his speech of 27 April 1934—previously quoted—my client once more unreservedly expressed the will of Germany that she was still prepared for any understanding even at the price of further armament limitations by agreement, if this would correspond with her demand for equality. She did not, however, limit herself to this alone. In order to resume the international discussions and negotiations regarding the disarmament question, which had been interrupted by France's "no" of 17 April 1934, Hitler met Mussolini in Venice in the middle of June 1934. The purpose and subjects of discussion at this meeting were at that time summarized by Mussolini with the words: "We have met in order to try to disperse the clouds which are darkening the political horizon of Europe."

May I, then, for the sake of prudence, recall the fact that Italy at that time was still entirely on the side of the Western Powers. Several days later, in his speech at the Gautag at Gera on 17 June 1934 (Neurath Document Book 3, Exhibit Number Neurath-80), Hitler used the opportunity to emphasize once more his and Germany's unshakable wish for peace, when he stated literally among other things:

> "If anyone says to us: 'If you National Socialists wish equality for Germany, then we must increase our armaments,' then we can only say: 'As far as we are concerned you can do so, because after all we have no intention of attacking you. We merely wish to be so strong that the others will have no wish to attack us. The more the world speaks of the formation of blocks, the clearer it becomes to us that we must concern ourselves with the maintenance of our own power.' "

There was a definite clearly defined change in power relationships and the political tendencies were taking shape, which were also the basis of the English air armament program announced before the House of Commons on 19 July 1934, and the idea became prevalent expressed by the French Prime Minister Doumergue in his speech of 13 October 1934 at the bier of the assassinated Minister Louis Barthou: "The weak nations are booty or a danger." No matter how irrefutable this idea really was, as far as the attitude of the

Western Powers toward Germany was concerned, it received as little consideration as all attempts of German foreign policy to carry on the negotiations regarding the disarmament question and as the repeated declarations of Germany about her readiness for an understanding. Now, as before, Germany was denied the *de facto* recognition of her equality. Apart from the encirclement policy of France which became more discernible every day, this fact also made it impossible for German foreign policy to join the Eastern Pact. The reasons for this rejection of the Eastern Pact have been presented in detail in the communiqué of the German Government of 10 September 1934 (Neurath Document Book 3, Exhibit Number Neurath-85). They culminated in the statement that Germany, in view of her indisputable military weakness and inferiority, could not take on any treaty obligations toward the highly armed states which might involve her in all possible conflicts in the East, and could make her a probable theater of operations.

It was not the lack of preparedness to participate in international treaties or even a lack of a will for peace which caused Germany to maintain this attitude, but first and foremost her notorious military weakness. Added to this was the true character of France's policy which showed itself more and more, and that of the Eastern Pact as an instrument of the French policy of encirclement directed against Germany. This character became clear to all the world when, in the session of the Army Committee of the French Cabinet on 23 November 1934, the reporter Archimbaud described it as an undeniable fact that a formal entente existed between France and Russia on the basis of which, in the event of a conflict, France would be prepared to furnish a considerable well-equipped and well-trained army (Neurath Document Book 3, Exhibit Number Neurath-89). This fact, however, was clearly and openly proved by the declaration of the French Minister for Foreign Affairs Laval on 20 January 1935 before a representative of the Russian newspaper *Izvestia*, in connection with the French-Russian record of 5 December 1934 (Neurath Document Book 3, Exhibit Number Neurath-91) and Litvinov's interpretations of it of 9 December 1934. For those well informed there could exist no further doubt of the existence of a close French-Russian alliance, even if the ratification of its final text only took place on 2 May 1935, which was then immediately followed by the ratification of the Russo-Czechoslovak Non-Aggression Pact of 16 May 1935.

It was forced upon the mind of every clear-thinking person that the French system of alliances made in this way was desperately akin to the one which had opposed Germany once already in the year 1914. This involuntary parallel was bound to make every German statesman draw the conclusion that those alliances could only be directed against Germany and accordingly constituted, at least, a menace to her. And this, much more so, as these alliances, this

obvious encirclement of Germany, were by no means the only alarming events. Coupled with it, a vast increase in military armaments of nearly all non-German countries had been carried out in the course of the preceding months. Not only had England begun to carry out her large-scale armament program, as is shown by the British White Book of 1 March 1935, the submission of which does not seem necessary, since it is an official historical document, but in France too the efforts to reinforce her Army had begun under the guidance of Marshal Pétain, her most popular general at that time, while in Russia an increase in the peacetime figure of her Army from 600,000 to 940,000 men had taken place, with the joyful acquiescence of France. Czechoslovakia had introduced a 2-year compulsory service in December 1934 (Neurath Document Book 3, Exhibit Number Neurath-92) and Italy, too, was continually increasing her armaments.

After the bitter experiences of the latter years, all this was bound to be felt from the point of view of German politics, as I have shown you, My Lords, as nothing but a serious menace, and interpreted accordingly, a menace which left Germany all but defenseless.

A foreign policy, conscious of its responsibility, had to reckon at each moment with the danger that such a concentrated and continually increasing power of France and her Allies could fall upon Germany and crush her. For nothing is more dangerous than a concentration of power in one hand. According to experience, it is bound to cause an explosion sometime, if not counterbalanced by some other power, and this explosion is then directed toward the nearest country considered as an enemy. This latter was and could be only Germany, as this country alone was considered by France as her foe, and no other country in the world besides her.

And now I beg to ask you, My Lords, whether it was not an obvious command of self-defense, an obvious demand of the most primitive instinct for self-preservation of any living being—and nations, too, are living entities with such an instinct for self-preservation—that now the German Government and the German people took back the military sovereignty which had constantly been denied them for no reason and that they on their part tried to take measures of security against the menace hanging over Germany by organizing a military air fleet and by the law concerning the establishing of a peacetime army of only 36 divisions on the basis of compulsory military service. I refer to the proclamation of the German Reich Cabinet concerning the restoration of German compulsory service of 16 March 1935 (Neurath Document Book 2, Exhibit Number Neurath-97).

THE PRESIDENT: The Tribunal will adjourn.

[The Tribunal adjourned until 24 July 1946 at 1000 hours.]

ONE HUNDRED AND EIGHTY-FIFTH DAY

Wednesday, 24 July 1946

Morning Session

MARSHAL: May it please the Tribunal, the Defendants Hess and Raeder are absent.

THE PRESIDENT: The Tribunal will now hear the applications for witnesses on behalf of the various organizations, taking the SS first.

MAJOR JONES: If Your Lordship pleases, with regard to the SS organization, defending counsel have applied for seven witnesses. Five of these—Von Eberstein, Hinderfeld, Hausser, Riedel, and Reinicke—are among the 29 SS witnesses whose evidence has been heard on commission. The Prosecution have no objection to the calling of these witnesses although, as there is a certain amount of overlapping in the evidence of Eberstein and Hinderfeld, it is suggested with respect that this might be avoided when those two witnesses are examined by Dr. Pelckmann.

As to the other witnesses applied for; with regard to Rode, the Tribunal will see from defending counsel's application that an affidavit from this witness was put in by the Prosecution as Exhibit USA-562. Dr. Pelckmann has informed me that he does not propose or desire to call Rode to testify before the Tribunal itself, but will be quite content to cross-examine Rode on commission. Therefore, if the Tribunal think that the interests of justice demand the resumption in this particular case of the taking of evidence on commission, the Prosecution have no objection to Dr. Pelckmann's suggestion. Perhaps in fairness to Dr. Pelckmann, I ought to add that I understand that Rode only arrived in Nuremberg a few days ago.

The last witness applied for is Hermann Rauschning, the former Senate President of the former Free City of Danzig and the author of the book *The Voice of Destruction,* extracts from which the Prosecution have submitted in Document USSR-378, as part of the Prosecution case. No affidavit from Rauschning has ever been used by the Prosecution. I understand that Dr. Rauschning himself is now in the United States. With regard to him, the Prosecution object to his being called as a witness upon the following grounds.

If the Tribunal will look at defending counsel's application, it will be seen that there are three matters which it is desired to have clarified by Rauschning. Insofar as some of these facts may be relevant or have evidential value, I submit that those facts can be extracted from Rauschning's book *The Voice of Destruction*, and that in those circumstances it is quite unnecessary to have Rauschning here as a witness himself. The Prosecution would, of course, have no objection to further extracts from that book being put in as part of the defense case of the SS organization.

THE PRESIDENT: Would the Prosecution object to interrogatories being put to Rauschning?

MAJOR JONES: No, My Lord, we should have no objection to that.

There are facts set out in the first two paragraphs of defending counsel's application with regard to Rauschning. I submit that with regard to the first, a Cassandra-like statement by Rauschning that up to 1939 his warnings were not heeded, it has, I submit, no evidential value whatsoever. With regard to the second paragraph, in which it is stated that Rauschning has knowledge of the fact that in 1936-37 Hitler did not yet have the intention of exterminating the Jews, it is not in any way clear how Rauschning could, in fact, have had any knowledge of Hitler's intentions at all—even the devil knoweth not the heart of man.

I do not submit that testimony of that kind from Rauschning would be wholly irrelevant. Whatever I have said, the Prosecution would have no objection to further extracts being taken from Rauschning's book, or interrogatories being administered to him.

THE PRESIDENT: Dr. Pelckmann.

HERR PELCKMANN: May it please the High Tribunal, I am in complete agreement with what Mr. Elwyn Jones has said, as far as it applies to the rest of the witnesses.

Regarding his statement about the witness Rauschning, I should like to say the following. The decision of 13 March, Figure 6a, Paragraph 3, specifies that it is relevant to submit evidence on whether the possible criminal aims and activities of the SS were quite obvious, or were known to the bulk of the members. I tried before the Commission to prove that the aims and activities were not criminal, that the crimes committed were only individual acts or acts of certain groups, and that these acts were not known to the majority of the members. I tried to prove this by means of relatively very few witnesses, compared with the number of members as the Prosecutor has stated, by means of 29 witnesses from among thousands of affidavits. All this material will still be submitted to the High Tribunal in due course, but it all concerns the so-called

legal standing of membership. The Prosecution, on the other hand, submitted their evidence against the SS, as well as against the other organizations, directly to the Tribunal through documents and through the direct testimony of witnesses, a procedure which took many weeks.

With regard to the further assertion that the bulk of the SS knew of such criminal aims of the SS and of the criminal acts of individual members or certain groups, the Prosecution did not present any proof, but merely asserted that this could be seen from the circumstances, and was a matter of course. I consider it only just and proper that in addition to the statements of SS members, which as indirect proof I shall submit in large numbers in the form of affidavits, and the probative value of which could be disputed by the Prosecution because they are statements of the people in question themselves, of the SS members—as I say, I consider it only right and proper that in addition the witness Rauschning, the only one of my witnesses who is not under automatic arrest, should testify before this Tribunal, and should testify in person. The only other witnesses who will appear in person are the five witnesses of the SS who held a relatively high rank in the SS and, therefore, have an over-all knowledge; but it can be held against them that their testimony is not quite credible.

As for the person of Rauschning and the relevance of his testimony I should like briefly to say the following: As has already been stated, he was an SS Standartenführer and President of the Danzig Senate. He had the complete confidence of Hitler until 1936, when the rupture with Hitler occurred. Rauschning emigrated and was very active in publishing material abroad. In his books, which have become well known throughout the world, he constantly warned against Hitler and his plans, and he is still known everywhere as a man who did not defend or protect the Hitler regime and its guilty members.

In his many conversations with Hitler, he learned—and now I come to the main point of my application—first, that, at least in the years 1936 and 1937, Hitler did not intend to exterminate the Jewish population. He has given detailed reasons for this statement, and the objection of the Prosecution that it was impossible to recognize Hitler's intentions is not quite apposite, because this precisely is the task of the Tribunal, to recognize Hitler's intentions with regard to the salient points of the Indictment. If Hitler's intentions are recognized then perhaps one can judge the responsibility of the bulk of the members of the organizations. Of course, we have only circumstantial evidence and must, if possible, obtain and evaluate direct evidence of Hitler's intentions. This direct evidence of Hitler's intentions, the witness Rauschning can give on the basis of

his conversations with Hitler, and I do not think that one can find a better witness for this subject. Second—continuing with the points of my application—Rauschning learned that Hitler . . .

THE PRESIDENT: What is it, Dr. Pelckmann, that makes you think that Rauschning would be able to give this evidence?

HERR PELCKMANN: I know his books, My Lord.

THE PRESIDENT: Then if it is in his book, how will it help to have him say what is in his book again?

HERR PELCKMANN: Of course, his books represent only a very small part of his entire knowledge, and he certainly did not write them with this Trial in mind. The chief points brought up by the Prosecution in this Trial can now be answered much more satisfactorily by the witness himself than by quotations from his book torn out of their context.

THE PRESIDENT: I understand you to be saying that the only reason you have got for thinking that he would be able to answer these questions is because of what you see in the book. Then you do not know that he can give any further evidence than is in the book.

HERR PELCKMANN: Of course, I do not know that but it is probable, and my assumption that he can do it is based on experience. I do not think that I am asking for anything out of the ordinary. I expect a man who in the years from 1933 to 1936 concerned himself so intensively with Hitler and Nazism, and then studied this regime in later years and discussed it with foreigners—I expect such a man to know much more than is set down in his books.

And I also have the following reasons for my application. In preferring their charges the Prosecution used quotations from the books of Rauschning, and these quotations are practically identical with affidavits. The Prosecution would equally well have been able to obtain affidavits on the pertinent passages in Rauschning's book which would perhaps have contained his assertions in more detail. According to the rules of procedure established by this Tribunal, I am entitled to ask that witnesses who have deposed affidavits for the Prosecution be cross-examined by the Defense before the Tribunal. I believe that if . . .

THE PRESIDENT: I am not aware that such a rule applied to witnesses in the United States. The rule, insofar as any rule at all was made, was that people who were in this country, if they had made affidavits, might be brought here for cross-examination. That rule has never been applied to persons who were in the United States or in any other country outside this country. The case of Mr. Messersmith is an instance, and there has never been a case of anybody being brought in, except perhaps the witness Dahlerus.

HERR PELCKMANN: Since the Indictment and the Tribunal's verdict is of great importance for all members of the SS, and since, unlike the cases of the individual defendants, I can only call members of the organization as witnesses—and this is a considerable restriction—I think I may ask the Tribunal that this witness—the only one who is not implicated and can tell the Tribunal something about conditions at that time and his views on them—that this witness be brought here; for technical difficulties should play no part in this Trial of surely world-wide significance. This is my full conviction.

May I continue, My Lord?

THE PRESIDENT: Certainly.

HERR PELCKMANN: The witness is to testify further that it was Hitler's deliberate policy to deceive the German people, as well as foreign countries, about his plans and intentions—for instance, about his war intentions. In very intimate conversations with Rauschning, Hitler remarked—and almost joked about it—how successful he was in leading by the nose not only foreign countries but even his own people. These questions are relevant for the decision regarding evidence.

With reference to the Jewish question, I refer to the assertion of the Prosecution that the Party program resulted directly in the extermination camp at Auschwitz. The Party program, as the bulk of the SS members saw it, provided only for a solution of the Jewish question on the basis of the statute of minorities, supplemented by the somewhat more severe Nuremberg Laws of 1935. But, however this may be, it would not yet constitute a crime against humanity. If it could be proved that during this time Hitler actually did not intend to exceed this program, then the assertion of the Prosecution could no longer be upheld. If this attitude of Hitler, at that time, can be proved, then the SS and the simple SS man who followed this program could not have had any other attitude either.

Secondly, the deception of the German people. The following is clear. 1) We know today from the various documents just what did take place at that time. We need only read the Reichstag speech about Hitler's will for peace, or the reasons given for the murders on 30 June 1934. But it would be startling if a witness asserted that Hitler had confided to him that it was his principle to deceive the Germans about his true intentions. In answer to this, the Prosecution would have to prove that just the SS was not to be deceived—that the SS, in agreement with Hitler, knew what Hitler actually wanted.

THE PRESIDENT: Dr. Pelckmann, the Tribunal did not desire to hear a general argument from you upon the whole case. They are

simply dealing with the question of whether this man Rauschning should be brought from the United States.

HERR PELCKMANN: If the relevance of his testimony is not disputed, then I can very well understand . . .

THE PRESIDENT: Dr. Pelckmann, we have your written application before us, and you are dealing with a variety of matters which are not mentioned in that written application.

HERR PELCKMANN: I cannot, of course, set down in my application everything that I would want to include. This application, naturally, contains only my main points: (1) The Jewish question, (2) the deception of the German people, and (3) of the SS members.

THE PRESIDENT: We have indicated to you what the view of the Tribunal is—that we think that you have dealt with the application, and we do not desire to hear a general argument.

HERR PELCKMANN: Mr. President, I tried only to show the relevance of my three points of evidence. If the Tribunal can assume that these points are relevant, then, I think, I need only add this: A single witness who is outside the SS, who, it is true, at one time . . .

THE PRESIDENT: You have already said that, Dr. Pelckmann, more than once, and the Tribunal are quite aware of what you have said.

HERR PELCKMANN: Mr. President, do you not want an answer to the question why we should deviate from the general rule and bring this witness here from America? Do you not want an answer to that?

THE PRESIDENT: You have already presented argument to that effect.

Now we will deal with the SD.

MR. DODD: Mr. President, counsel for the SD has asked for only two witnesses, and the Prosecution have no objection to these two witnesses being heard by the Tribunal. It seems like a reasonable number.

While I am before the Tribunal, may I go on with the applications for the Reich Cabinet and High Command as well?

THE PRESIDENT: The Reich Cabinet, we understood, was not going to be dealt with today.

MR. DODD: We received the application for one witness this morning.

THE PRESIDENT: Oh, yes. Certainly, go on and deal with these.

MR. DODD: With respect to the High Command, counsel for the defendant organization has asked for six witnesses, and our position

is that it is at least twice as many as are necessary, and that three—something like three—would be a much more reasonable number to present before the Tribunal. We have no particular preferences or no objections—no particular objections—to any of the three. I understand, however, that counsel prefers Von Rundstedt, Von Brauchitsch, and Von Manstein, and we have no objections if that is his choice of the six, but we do object to six, on the ground that they are too numerous, and all of them have been heard before the Commission.

With respect to the application of the Gestapo, only two witnesses are asked for—the witness Best and the witness Hoffmann—and we have no objection to the appearances of these two witnesses.

THE PRESIDENT: The two names, Karl Heinz, are Christian names, I suppose?

MR. DODD: Yes, so I have understood, Mr. President.

I am not clear, Mr. President, whether or not you wish to have me deal with the Reich Cabinet. Shall I make known our attitude toward the one witness?

THE PRESIDENT: I think so. Certainly, you may deal with them now if they are ready. Dr. Kubuschok . . .

MR. DODD: In any event, he has only asked for one witness, Mr. President, and we have no objection—the witness Schlegelberger.

THE PRESIDENT: Very well, Mr. Dodd. Unless counsel for the SD, Gestapo, and the Reich Cabinet want to say anything, the Tribunal do not think it is necessary to hear them.

Then, they would hear counsel for the High Command, Dr. Laternser. Yes, Dr. Laternser.

DR. LATERNSER: Mr. President, in view of the importance of the accusations raised against the military leaders, I am convinced that the application for six witnesses is justified. In order to be able to decide the question whether the military leaders were criminal or not, the Tribunal must first obtain a personal picture and a personal impression of some of these military leaders. If only a few of the 129 persons affected by the Indictment against the organization I defend are heard here, can one assume that the High Tribunal will have gained a true picture? My definite answer is "no."

THE PRESIDENT: Can you tell me how many of the 129 we have already heard before the Tribunal?

DR. LATERNSER: Before this Tribunal, Mr. President—before the Commission, seven members of the group were heard, two are still outstanding.

THE PRESIDENT: I did not say before the Commission; I said before the Tribunal.

DR. LATERNSER: I put questions to about five or six persons, I believe, of this group when they appeared here.

THE PRESIDENT: Yes. Go on.

DR. LATERNSER: In estimating the number of witnesses to be heard here, I ask that the following also be taken into consideration. In regard to the calling of witnesses who could refute the statements made by the witnesses of the Prosecution, the defense of the organizations are handicapped greatly by the resolution of the Tribunal which says that witnesses can be heard before the Tribunal only if they have previously been heard before the Commission, even though in any other legal proceedings there would be extensive examinations of witnesses on many points. The circle of witnesses is thus restricted from the beginning and dependent upon the scope of the Commission's activities.

I consider it necessary, Mr. President, to be in a position to convey to the Tribunal a personal picture of the group indicted, and I should, therefore, like to make the following suggestion, which I believe to be practicable. May I suggest that for the group which I represent—only for my group, since I am not entitled to make a similar application on behalf of the other organizations—that for my group the Tribunal fix a certain time within which I may examine my witnesses before the Tribunal, and that the actual distribution of the time allotted be left to the defense. Then I should be able to question the six witnesses for whom I asked. I would even be prepared to use only two-thirds of the time to be allotted by the Tribunal, and to put one-third of it at the disposal of the Prosecution for cross-examination. In this way, Mr. President, I merely want to accomplish one thing—in my opinion the most important point—I want the Tribunal to gain a personal impression of the persons falling under the Indictment. I assume that the Tribunal will not object to this.

I would also like to suggest for the consideration of the Tribunal that the case against the organizations . . .

THE PRESIDENT: Dr. Laternser, let me make certain that I understand the suggestion. You are suggesting that the Tribunal should allot a certain time for the witnesses for the High Command, and that you, as counsel examining the witnesses, should take up two-thirds of the time, and that the Prosecution, in cross-examination, should take up one-third of the time. Is that correct?

DR. LATERNSER: Yes. I agree that within this time I may examine as many witnesses as I choose.

THE PRESIDENT: How much time are you contemplating?

DR. LATERNSER: That is rather difficult for me to answer.

THE PRESIDENT: It is your suggestion. The Tribunal would like to know how much time you are suggesting.

DR. LATERNSER: One and a half to two days in all.

I should like to make two more suggestions to the Tribunal which have some significance in this connection. All the witnesses appearing here have already been heard by the Commission, and the transcripts of the interrogations are in the hands of the Tribunal. If the same questions are put again, the evidence would certainly be cumulative. How then is the examination of the witnesses to be carried through without interruptions? Looked at from this angle, the suggestion I have just made becomes even more important, and also seems to remove the difficulties which I have described. If this is taken into consideration I believe the Tribunal would be able to follow my suggestion.

Finally, I should like to suggest the Tribunal also make a decision with regard to the handling of the final words on behalf of the accused organizations.

That is all.

THE PRESIDENT: The Tribunal would like to hear you with reference to Dr. Laternser's suggestions, Mr. Dodd.

MR. DODD: Very well, Mr. President.

We have, insofar as we recall, made a list of the names of the people who have appeared before the Commission as members of the organization, or of the groups, and those who have appeared before the Tribunal. I stated a few minutes ago that all of those who have not appeared—such as Von Brauchitsch, who was to appear, and who may have appeared yesterday, I am not informed—will appear in a day or so.

With reference to the suggestion of Dr. Laternser that he be allowed a specific time and may use as many witnesses in that time as he sees fit, we find two difficulties. First of all, we do not feel that he is being generous enough in allotting us one-third of the time. Possibly we may require more time for such a number of witnesses. In any event, we do not want to have a restriction placed on us to the effect that we have only one-third of the time that he has. If we are to examine witnesses on the time standpoint, we feel that much of the time would be taken up before the Tribunal on matters that have already been thoroughly dealt with before the Commission. All the witnesses have been heard before the Commission, and Dr. Laternser has had a full opportunity to examine and cross-examine before the Commission, and it seems unnecessary to burden the Tribunal with a great number of witnesses here.

THE PRESIDENT: The Tribunal would like to know whether it would make any difference to the arguments just presented to us if the Prosecution were allotted the same amount of time as Dr. Laternser?

MR. DODD: Well, it would make a little difference. Frankly, I did not consider that too important a point.

THE PRESIDENT: Perhaps there is one other thing which bears upon it. The Tribunal would like to know how you think the difficulty is to be met, that it seems unnecessary for the witnesses who are called before us here to give the whole of the evidence given before the Commission, or even to enter upon the subjects which have been entered upon before the Commission; and the Tribunal would like to know how that difficulty is to be met.

MR. DODD: We have been thinking about this very problem, and we had assumed that the witnesses who have appeared before the Commission, and who have been examined there, would not go over the same grounds before the Tribunal, otherwise the proceedings of the Commission would be rather senseless, and we might just as well get up and read the record of what was said before the Commission. We had understood that the witnesses would have something new to add to what they had already said before the Commission. That is our understanding.

THE PRESIDENT: Of course, I think Dr. Laternser has said on various occasions that he attached importance to the actual presence of the witness so that the Tribunal could see him and form their own opinion of the witness' credibility.

MR. DODD: Yes, that is what I understood to be one of the reasons, but three members . . .

THE PRESIDENT: In addition to our seeing the witnesses and forming an opinion of their credibility, he would be able to summarize the evidence given.

MR. DODD: Yes, I assume that would be so. Of course, four of these members of the groups we are in the dark about—and two of the members of Naval Command, Von Brauchitsch and Milch, and a number of others.

THE PRESIDENT: Thank you.

MR. DODD: With respect to the time suggestion which I made, I repeat I do not think that is too important. I know we can confine ourselves in cross-examination to the important matters, but I think it is the experience of the Tribunal that we seldom stayed within the limits which were established.

THE PRESIDENT: I do not think it is necessary to hear further argument. We will consider your suggestion; and your arguments, Dr. Laternser, are unnecessary unless there is anything particularly

new that you wish to say. The Tribunal will consider your suggestion.

We will now deal with the political leaders.

LT. COL. GRIFFITH-JONES: The Leadership Group has asked for seven witnesses: Two of them are Gauleiter, and are witnesses Kaufmann and Wahl; one Kreisleiter, Meyer-Wendeborn; one Ortsgruppenleiter, Wegscheider; Blockleiter Hirth and two experts on the staff of the Hoheitsträger—namely, a farming expert who was also a political leader, and Hupfauer who was a political leader in the DAF. The Prosecution have no objection to any of these witnesses, but we feel that the grounds could not be adequately and properly covered. And it may be of help to the Tribunal if I suggested the witnesses most important, and those which might be dispensed with.

THE PRESIDENT: Probably the Defense Counsel would wish to make their own selection.

LT. COL. GRIFFITH-JONES: My Lord, I fully appreciate that. I was only trying to assist the Tribunal if I could.

THE PRESIDENT: Yes, in indicating which appeared to you to be the most important.

LT. COL. GRIFFITH-JONES: Yes.

THE PRESIDENT: Yes, perhaps you could do that.

LT. COL. GRIFFITH-JONES: The Blockleiter Hirth, I respectfully submit, ought to be called, as he is the only Blockleiter represented. The witness Hupfauer ought to be called, because he represents the experts on these staffs. There is a certain amount of dispute about them. And also, he represents a number of political leaders who were in the DAF itself. Of the Gauleiter, Kaufmann and Wahl are experienced. Kaufmann comes from an industrial district and Wahl from an agricultural district, and I understand, if there were to be any preference, that Dr. Servatius prefers Kaufmann. There are also representing the agricultural districts, in addition to the Gauleiter Wahl, the Ortsgruppenleiter Wegscheider and the farmer Mohr. My Lord, I would respectfully suggest that certainly three of those witnesses are unnecessary. They really cover very much the same ground as each other and the Prosecution, quite frankly, would have preferred the witness Wahl. I simply put that forward to explain that they are all from agricultural areas and perhaps one, or certainly two, would be sufficient. Meyer-Wendeborn is an experienced Kreisleiter from an industrial district, and does, to a great extent, cover the same ground as the Gauleiter Kaufmann, so that the Tribunal might consider having one or the other if they felt that the present number was excessive.

Now, I do not think I can assist the Tribunal further than that.

DR. SERVATIUS: Mr. President, I named two Gauleiter; one from the industrial area—that is, the witness Kaufmann—and the witness Wahl from a rural area in the vicinity of Augsburg. I believe it would be important to get an impression of these two types of Gauleiter; one of these men was active in the Party for 20 years, and the other for 17 years, and both were political leaders. Before being able to judge the activities of the political leaders over such a wide area, and throughout such a long period of time, it is necessary to hear two people from the top level. I should, therefore, like to ask that, if possible, both witnesses be allowed. I should like the witness . . .

THE PRESIDENT: Dr. Servatius, two things I should like to ask you about these Gauleiter. Did not these two, Kaufmann and Wahl, deal with exactly the same topics before the Commission?

DR. SERVATIUS: Yes, but I want to divide the topics, and ask Kaufmann about relations with the top authorities, with the Reich Government, and Wahl about relations with the lower echelons, with the Kreis and Ortsgruppen. Of course, I could limit myself to one witness, but then the topics would not lie separated and would be bigger.

THE PRESIDENT: You mean you have not asked them about it before the Commission?

DR. SERVATIUS: Yes, but in the same way, separately.

THE PRESIDENT: There is one other thing. How many Gauleiter have we heard already before the Tribunal?

DR. SERVATIUS: I should think three or four, I do not know the exact figure; but they were not questioned about this topic, because it would have disturbed the taking of evidence at the time if we had gone into such detail.

THE PRESIDENT: Go ahead and deal with the other matters.

DR. SERVATIUS: The next witnesses are for Kreis, Ortsgruppe, and Block, and I think that from each level there should be one witness who can speak of the conditions in his field. Their testimony will, of course, overlap, but it can be shortened so that the actual examination will perhaps be quite brief and not too far afield; but it is, I think, important to have one witness from each level.

THE PRESIDENT: Could you give the Tribunal any estimate of the time you think it would take to deal with these seven witnesses?

DR. SERVATIUS: I am sure I can do it in one day; it depends upon how the evidence is to be taken. I assume we shall have a brief summary and clarify only a few questions on principle.

Then there are two more witnesses, Hupfauer and Mohr. One is from the German Labor Front, from an industrial region, and the other is from the Reich Food Estate and can speak about rural conditions. Both witnesses can speak about the position of the specialist offices which were not political directing offices, and can thus differentiate between the nonpolitical and the political leaders.

That is all I have to say.

THE PRESIDENT: The Tribunal will adjourn.

[A recess was taken.]

THE PRESIDENT: The Tribunal makes the following order:

With reference to the case of the SS, the five witnesses, Brill, Von Eberstein, Hinderfeld, Reinicke, and Hausser are allowed. Rode may be called to be cross-examined before the Commissioners. Interrogatories may be administered to Rauschning, but they must be administered immediately, and they will only be considered if they are received before the case is closed. Further extracts from Rauschning's book, which has been referred to, may be submitted to the Tribunal.

With reference to the case of the SD, the two witnesses applied for, Höppner and Rössner, are allowed.

The two witnesses applied for by the Gestapo, Best and Hoffmann, are allowed.

With reference to the application on behalf of the Reich Cabinet, the witness named must be called before the Commission.

With reference to the General Staff and High Command, General Von Manstein and two others will be allowed. If it is desired that General Von Brauchitsch should be one of the two, he must be called before the Commission, and it is necessary that these matters should be decided by counsel for the defendant organization at once.

With reference to the political leaders, the defendant's counsel must select five out of the witnesses applied for and those five will be allowed.

That is all.

I call on Dr. Von Lüdinghausen.

DR. VON LÜDINGHAUSEN: May it please the Tribunal: Yesterday I attempted to show the weighty and compelling reasons why the leaders of the German State had to decide to reinstate Germany's armed sovereignty.

But also before making this decision Germany had waited for the outcome of the negotiations for a general agreement on disarmament, which the British Government had opened again with

the so-called London Communiqué of 3 February 1935, and in which Germany, faithful as always in its foreign policy to the principle of peace, had at once agreed to participate. Germany was prepared to wait even longer, until one could see whether or not these new negotiations would succeed; but before the negotiations had really begun, the French Government, on 1 March 1935, suddenly brought out a new defense bill prolonging military service, and almost simultaneously the British Government published its White Paper, which has already been mentioned. In view of these two measures, the German Government had no alternative: It had to take the steps which I have described, otherwise it would have betrayed its own people.

The effect of these German measures on the Western Powers was a varied one. England and Italy, it is true, at once protested against them as an alleged unilateral cancellation of international treaties; but they did not by any means exclude the possibility of further negotiations, and the British note of protest explicitly inquired whether the German Government was ready to conduct further negotiations of the nature and extent provided in the London communiqué. This inquiry was immediately answered in the affirmative by the Defendant Von Neurath. The reply was contained in the German Communiqué of 18 March 1935, Neurath Document Book 3, Document Number 98, and the then British Foreign Secretary Eden went to Berlin at the end of March 1935 for conversations about the possibilities of an agreement in the naval question.

In this connection, I particularly want to draw attention to the testimony of the witness Ambassador Dr. Dieckhoff, who was heard here. Only France, in consequence of her attitude that only the League of Nations was entitled to solve collectively the problems of disarmament and, therefore, of peace—only France considered it necessary to submit the measures taken by Germany to the League of Nations, on 20 March 1935, and to induce the League to establish that Germany had committed a violation of a duty incumbent on all nations, the duty of carrying out contracted obligations. It goes without saying that the German Government, in its note of 20 April 1935, refused to accept the renewed discrimination contained in this resolution of the League of Nations.

However, neither this resolution, nor the signing, on 2 May 1935, of the afore-mentioned Franco-Russian Treaty of Mutual Assistance, nor the Russian-Czechoslovak Treaty of Mutual Assistance which supplemented it, prevented Germany from continuing her very active efforts for an agreement with the Western Powers. On 21 May 1935 Hitler, in the German Reichstag, proclaimed a new peace program, in which he again stressed and underlined in the

most emphatic manner possible his own and the German people's irrevocable will for peace, and his full readiness to participate in any system, or in a collective collaboration, which would guarantee European peace, to re-enter the League of Nations, provided that Germany's equality of rights was acknowledged, and to apply to the rearmament of the German Wehrmacht any restriction which the other powers might also adopt. This speech of Hitler and the diplomatic discussions with other powers, initiated at the same time, had the promising result that the well-known Naval Agreement of 18 June 1935, establishing a fixed ratio of the respective naval forces, was concluded between England and Germany.

This German-English agreement is of the greatest importance in two respects. On the one hand, from a diplomatic point of view, it constitutes no more and no less than the *de facto* acknowledgment, on the part of England, of German armed sovereignty, the negation of the League of Nations' resolution and, therefore, of the French point of view, and England's acknowledgment and approval of the German act which had been stigmatized by the League of Nations as a treaty violation. For the first time, therefore, Germany's equality of rights was recognized not only *de jure* but also *de facto* by one of the Western Powers, and by one of the most important ones.

On the other hand, this agreement proves irrefutably, from the point of view of this Trial, that the Prosecution's contention that Germany's rearmament was an act of preparation for Hitler's future wars of aggression is incorrect. On the contrary, this naval agreement shows quite clearly that German foreign policy, at that time, while it was still conducted by my client, had no warlike intentions of any sort, not to speak of plans, and that the reinstatement of German armed sovereignty was not under any circumstances an indication of warlike intentions, but an obviously defensive measure and nothing else. Would a statesman who harbors warlike intentions or plans, moreover, voluntarily consent to a restriction of his armaments to the extent provided by the naval agreement, and thus endanger the successful execution of his intentions and plans? Even the most malevolent person cannot earnestly maintain that the naval power granted Germany by this agreement was even remotely sufficient for a war of aggression; that has been clearly established by the evidence in this Trial. Through this agreement Hitler actually deprived himself of the possibility of creating a navy sufficiently powerful to wage a war of aggression. It is clear that any considerable transgression of the agreed ratio of the two navies which, as things were, could under no circumstances and by no means have been kept secret, would beyond doubt have induced England immediately either to increase her

own navy accordingly or to obstruct this German intention by force, as she had the power to do at any time. From whatever point of view one may look at this naval agreement, nothing can remove the fact that it was, and is, an unshakable proof of the absolute honesty and sincerity of the repeated declarations of Germany's will for peace, an irrefutable proof against the existence of any, even the most secret warlike designs or plans of German foreign policy and, therefore, of its leader, the Defendant Von Neurath.

In France this Anglo-German naval agreement met with general opposition. It was regarded as an arbitrary act on the part of England, a departure from the common line which still found expression in the resolution of the League of Nations, a departure, moreover, which was bound to interfere with French plans. So France was very reluctant and negative in her attitude toward the negotiations which England had begun with the aim of concluding a general air pact, and which ran parallel with the negotiations for the naval agreement. Hitler's speech of 21 May 1935 had also been the cause for these negotiations, because in it, Hitler, referring to the London communiqué, had also offered to take part in an agreement for the limitation of air armament, and the German Government, taking up the English suggestion, actually presented a draft for such an air pact on 29 May 1935. But talks of nearly 3 months' duration between the English and French Governments were necessary before England succeeded in inducing France to consent even to participate in these negotiations. This consent, however, was in reality not a consent at all because, among other things, it was made dependent on the condition that the realization of this air pact must keep pace with the negotiations for the Eastern treaty, and since this treaty had, at that time, to be rejected by Germany for reasons of her own security, as has already been mentioned, it was clear that the French condition would block the way to successful negotiations from the very beginning. When the Soviet-sponsored Comintern Congress met in Moscow on 25 July 1935, and it became quite clear that the Comintern's aim was world revolution, Germany's opposition—as will be understood—only stiffened.

It could not be surprising that on 16 September 1935 the Defendant Von Neurath informed the English Ambassador that the German Foreign Office did not consider that an answer to the memorandum of the British Government of 5 August 1935 would be opportune; that was the memorandum which had demanded answers to a number of French questions hardly connected with the air pact. Besides, the conflict between Italy and Abyssinia had already cast its shadows, which alone were sufficient to suspend further negotiations for the air pact. For how could a political agreement between the five powers of the Locarno Treaty be possible—and the

German Foreign Office very rightly pointed this out—if co-operation between these powers was in a state of dissolution, and if some of these powers were even facing each other in armed readiness. On 7 September 1935, as is known, the British Home Fleet set out for the Mediterranean, and negotiations between England and France for the application of sanctions against Italy were in full swing. On 3 October 1935 war broke out between Italy and Abyssinia.

German foreign policy succeeded in keeping out of the events which now followed in Africa and the efforts of the powers to apply sanctions against Italy. But nevertheless these events proved of importance for German foreign policy, too; because they prepared, and especially the question of sanctions, a new constellation of powers, which on one hand led to a closer union between England and France and the adoption by England of France's point of view, and on the other hand brought Germany, again defamed by the resolution of the League of Nations of 17 April 1935, naturally closer together with Italy, who was also defamed by the sanctions applied against her. These sanctions, at the same time, logically enough resulted in the dissolution of the Locarno Treaty, for it was quite impossible to consider a treaty as still justified in its existence if its participants were opposed to one another in such a hostile way that the danger of warlike actions was always present.

The efforts of the French Government, already having begun in its note of 10 September 1935 to draw England also into the net of its pacts and obligations, clearly showed the tendency of French policy, and were only to confirm the German statesmen's conviction that France was consistently following her policy of encirclement, which was regarded as a menace to Germany. But Germany's leaders and the Defendant Von Neurath were still reluctant to draw the consequences from this state of affairs and take the absolutely essential step for the most primitive needs of Germany's security. German foreign policy, in its unshakable desire for peace and its readiness to negotiate, was still hoping that an agreement could be reached, that France would abandon her course, and that a really honest and sincere understanding with France could be reached. This hope, however, was soon a delusion.

On 16 January 1936 the French Foreign Minister Laval announced that after his return from Geneva at the beginning of February he would ask the French Parliament to ratify the Pact of Mutual Assistance concluded with Russia. And at about the same time the Defendant Von Neurath heard from reliable sources that the French General Staff had worked out military plans for an attack on Germany, providing for the advance of French troops from the Rhineland, along the course of the river Main, for a link with the Russian armies through Czechoslovakia. This proved even to the

most naive the offensive character of the Franco-Russian pact, and there was even less room for doubt if one took into consideration the negotiations which took place inside and outside the French Chamber before the ratification of the pact. For even in France, opposition to this pact, specifically on account of its offensive character, was not small. The French veterans of the first World War headed the opposition: The *Union Nationale des Combattants* declared, in a resolution of 8 February 1936, that this pact contained more certainties of war than possibilities of peace. And the speech of Deputy Montigny in the French Chamber on 13 February 1936 was a single flaming protest—this is contained in my Document Book 4, Document Neurath-107. The pact, Montigny said, only widened the breach between France and Germany, and Germany must more than ever gain the impression that she was being encircled if a party dependent on Moscow, like the Communist Party, followed the policy of Delcassé, the policy of revenge and the policy of the former Russo-French pact. The greatest danger of war would arise if France were to convey the impression that she enjoyed the secret protection of Moscow.

Even the German Government made a last attempt to dissuade France from ratifying the pact. In the interview which he gave to Bertrand de Jouvenel, the correspondent of the French newspaper *Paris Midi,* on 21 February 1936—Document Book 4, Document Neurath-108—Hitler once again held out his hand to the French people for an understanding, for lasting peace and for friendship. "I want to prove to my people," Hitler said, "that the idea of hereditary enmity between France and Germany is an absurdity." And in that interview Hitler once and for all disposed of the continual references to his book *Mein Kampf,* which were being made at that time just as much as today in this courtroom, when he said:

> "When I wrote this book, I was in prison. At that time, French troops occupied the Ruhr—it was at the moment of greatest tension between our two countries. Yes, we were enemies, and I stood by my country as I was bound to do, just as I stood by my country against yours when I spent 4 years and 6 months in the trenches. I should despise myself if, in the event of a conflict, I had not considered myself a German first and foremost. But today there is no longer any reason for a conflict.
>
> "You would like me to correct my book, as a writer would do.... But I am not a writer; I am a politician. I make my corrections in my foreign policy, which is directed toward an understanding with France. If I achieve this German-French understanding, it will be a worthwhile correction."

In the same interview, however, Hitler drew attention quite clearly to the inevitable consequences of the Franco-Russian pact:

"My personal efforts for such an understanding will never cease. But this more than regrettable pact would, in fact, create a new situation. Are you in France not conscious of what you are doing?

"You are allowing yourself to be drawn into a diplomatic game of a power which is interested only in causing confusion among the great European nations, a state of affairs from which this power alone will derive an advantage. One must not lose sight of the fact that Soviet Russia is a political factor with an explosive revolutionary idea and gigantic armaments."

He concluded the interview by emphasizing again that France could, if she wanted, end this alleged German danger permanently, because the German people had complete confidence in him, their leader, and he desired friendship with France. That Hitler was honest and sincere in these declarations has been proved by the evidence of the Trial.

But it was all in vain. The French Government could no longer be moved to abandon its rigid attitude, and on 27 February 1936, the French Chamber, in spite of all warnings, voted to ratify the pact. The die was cast. On 7 March 1936 German troops again marched into their old garrisons in the Rhineland zone, demilitarized until then. The German Reich had restored its full sovereignty over the entire territory of the Reich. The last of the barriers of the Versailles Treaty, restricting this full sovereignty, had fallen.

This reinstatement of the full sovereignty of the Reich over the Rhineland, however, was of importance for a reason which, from the standpoint of existence of the German State and nation, far surpassed the politics and prestige of this step, and which was also the sole cause for the grave decision of the German Government. This reason was the security of the Reich. As long as the Rhineland was demilitarized, not only was one of the most valuable and most important provinces of the Reich, but the Reich itself, and especially its life source, the Ruhr territory, defenseless against any military attack from the West. The only protection for Germany against this terrible latent danger was the Locarno Treaty of 1925, which was guaranteed by Great Britain and Italy, and in which France and Belgium, on the one hand, and Germany on the other hand, undertook not to wage war against each other. Therefore, for the German Reich, if it was in the future to accept the vulnerability of its western frontier in the form of a demilitarized Rhineland, it was a matter of life and death that the protection which this treaty afforded should not be falsified.

But the meaning of this treaty and its essence, the protection of Germany, were, in fact, falsified at the moment when the political conditions and constellations which had existed at the time of the conclusion of the treaty changed fundamentally. When the Locarno Treaty was concluded, political conditions in Europe, and also in Germany, were governed and determined solely by the four powers —England, France, Italy, and Germany—acting in unison. And, therefore, the men who made the Locarno Treaty for Germany could legitimately rely on the faithfulness to this treaty of France and Belgium as sufficient protection. These circumstances, however, ceased to exist—and, therefore, the meaning and essence of this treaty, and with it the conditions for the protection for Germany, were bound to change or to be falsified—when France altered this political relationship in Europe fundamentally by concluding her pact of mutual assistance with Russia, and thereby creating a situation which frustrated the aim and purpose of the Locarno Treaty—namely, to give Germany protection against the permanent danger arising from the demilitarization of the Rhineland.

The political constellation of Europe had been completely changed, indeed reversed, by this pact, because the world's greatest military power, which was, moreover, at that time openly revolutionary-minded, had now entered the political arena. In the face of the obscure situation in the East, amply strewn with the seeds of a conflict, the pact could easily result in the possibility of France, in view of her obligations toward Russia, being drawn into a war against Germany, and attacking Germany who might be involved in a conflict in the East. One has to admit that it was in no way certain, or in any case highly problematical, whether the guaranteeing powers, England and Italy, would under those circumstances consider the case in point as one in which the guarantee applied, and would actively assist Germany against a French attack, or whether they would not rather prefer to stay neutral. That this possibility actually existed, also from the legal point of view of the treaty, was already shown in the German note of 25 May 1935 about the French-Russian pact—Document Book 3, Document Neurath-105—and was emphasized again in the German memorandum of 7 March 1936 to the signatory powers of the Locarno Treaty—Document Book 4, Document Neurath-109.

As I have already said, this possibility, this danger, became even greater and more imminent as a result of the events leading up to the ratification of the French-Russian pact by the French Chamber, and as a result of the ratification itself. It was, therefore, an imperative and manifest act of self-defense and self-preservation when the German Government, in realizing this tremendous danger, took the minimum steps necessary to meet this danger—namely,

when it restored the armed sovereignty of the Reich in 1935, when one year later it reoccupied the demilitarized zone, the ideal base for any French attack, and thus advanced the defense line against any attack from the West forward to the border of the Reich.

With all due respect to the rights and rightful interests of other nations, the very highest, overriding duty of every government—and of all responsible statesmen—was, is now, and always will be, to maintain and safeguard the existence and life of its own state and nation. A statesman who neglects this duty commits a sin against his nation. The re-establishment of armed sovereignty, rearmament, and the reoccupation of the Rhineland were the natural reactions, the dutiful answer, of the German statesmen—and of the Defendant Von Neurath—to the policy of the French Government, in which, after all that had gone before, they saw a threat to Germany.

Far be it from me—and I wish to state this quite emphatically—to reproach by my foregoing statements the French Government here, morally or otherwise, for its policy as I have described it. I am, in fact—together with the Defendant Von Neurath—firmly convinced, and I recognize fully, that the French policy was dictated solely by France's interests, and that the French statesmen surely did only what they believed was right from the French point of view. And if, in doing this, they proceeded on a premise which, according to German conviction, was a false one—namely, the premise that a Germany which had regained her strength constituted a danger and a threat to France, and that the German people had always regarded the French people with blind rage, hatred, and enmity, and were animated only by a passion for aggression and a desire for revenge—then my client and I can only sincerely deplore this, but we cannot condemn it.

But, on the other hand, I, too, must claim for the German statesmen—for the Defendant Von Neurath—the right that their deeds and actions be judged on the basis of their reasons, on the basis of the needs and circumstances of the time, and from the viewpoint of German interests; and that these men not be accused of motives which in themselves are more than improbable and were, in any case, far from their minds.

Politics, diplomacy, is history come to life. Like the entire universe, like everything that lives and moves in it, this living history, too, is subject to an unchangeable fundamental law, the law of causality. And I believe, Gentlemen of the Tribunal, that I have been able to produce clear evidence that the two actions with which the defendant is charged by the Prosecution, and which are said to incriminate him, in particular, because they constituted

treaty violations in preparation for war—namely, the re-establishment of the armed sovereignty of the Reich and the remilitarization of the Rhineland—were a logical and inevitable sequence of the events and the political development during the years of my client's activity as Foreign Minister, the result of the policies of the Western Powers; and that neither he nor Hitler consciously, intentionally, or according to a preconceived plan, brought them about, but that they were the unavoidable outcome of French policy. They, therefore, not only cannot have an aggressive character or tendency, and cannot indicate preparations for war, as the Prosecution assert in their retrospective consideration of these things but, on the contrary, they served only the defensive purpose of warding off a possible attack, and have a decidedly defensive and, therefore, peaceful character. That they cannot, therefore, be viewed as actions preparatory for a future war of aggression on the part of Germany, I need hardly emphasize.

The assertion of the Prosecution proves only that it is absolutely inappropriate and quite absurd to view retrospectively and draw conclusions from single historical actions and events torn out of their context and roughly and incoherently put together. This way of viewing things is absolutely useless for the purpose of investigating and finding historical truth, which is surely the first condition and duty of this High Tribunal not only for the forming of their judgment but also for their task of showing the way for a new conception.

But a critical examination of the two steps charged against the defendant as breaches of international treaties fails, upon closer scrutiny of the circumstances, to prove the charges sound. For the Treaty of Versailles, as well as the Treaty of Locarno, had, in the course of time and events, not only lost their significance and therewith their inherent justification, but both of them had long since been broken by French policy and, therefore, annulled. The Treaty of Versailles had been broken by the obstinate refusal to carry out the disarmament obligations imposed upon France, as well as upon the other contracting nations, in return for Germany's disarmament; and the Treaty of Locarno had been broken by the conclusion of the agreement with Russia, which was incompatible with the Locarno Treaty. History, as often before, had passed over them, and had thus shown the absurdity of applying rigidly the dogma *Pacta servanda sunt,* as France tried to do with regard to Germany. This fact cannot be altered by the League of Nations resolution of 19 March 1936, which had been proposed by France, and which in itself was not astonishing in view of France's dominating position in the League of Nations; in this resolution the League stated that by reoccupying the Rhineland, Germany had

violated Article 43 of the Treaty of Versailles. But history passed over that, too.

I do not think that further comments are needed upon this resolution and the statements and parleys between the participating nations which preceded and followed it; they came to nothing, in the course of events, and Europe finally made the best of the accomplished facts.

But even on the supposition that this resolution were correct, a breach of an international treaty is punishable—according to the Charter of the High Tribunal—only if it served in the preparation of a war of aggression. And during this Trial one of the gentlemen of the American Prosecution expressly stated that it was absolutely legal and justifiable to bring about the revision or annulment of treaties by peaceful means; and German foreign policy did nothing else. The whole military action of the reoccupation of the Rhineland was, in view of the small force of troops used—only one division, and the Luftwaffe did not take part in it at all—in reality only a symbolic act for the restoration of the sovereignty of the Reich; that was already evident from the fact that, as early as 12 March 1936, the German Government, through a statement of its Ambassador in London, contained in my Document Book 4, Document Neurath-113, made the proposal that in the case of reciprocity it would not reinforce its troops and would not order them to advance closer to the borders. The proposal was rejected by France.

German policy has throughout, and in every respect, remained true to its principle of peace for which it had consistently stood for many years; and in reality it only desired to serve and did serve peace and its maintenance in Europe. Both steps, the restoration of armed sovereignty and the reoccupation of the Rhineland, were—and I especially want to emphasize this here—were nothing else but the visible expression of the full and unrestricted sovereignty of the Reich. This sovereignty had already been recognized by the Western Powers in the oft-mentioned Five Power Agreement of 11 December 1932, containing the recognition of Germany's right of equality. More conclusive evidence can hardly be found for the love of peace and the clear policy of peace of the Defendant Von Neurath than the fact that he waited for years for the realization of this recognition in order to avoid complications which, in view of the earlier attitude of the French and their policy, might possibly have arisen. He waited for years—up to the moment when, in consequence of the changed balance of power, this realization became an unquestionable necessity for the security of the Reich, a necessity of self-defense.

And German foreign policy continued unchanged in practice to follow this peaceful tendency even after, and in spite of this resolution. In the German memorandum of 31 March 1936—Document

Book 4, Document Neurath-116—the German Foreign Office, on behalf of the Reich Government, once more submitted to the powers a new great peace plan for a quarter of a century of peace in Europe, by means of which, as is stated at the end, it wanted to make its contribution to the building of a new Europe on the basis of mutual respect. This again was clear and unmistakable evidence of its unalterable will for peace. It was not Germany's fault that this German peace plan—and its absolute honesty and sincerity has been affirmed here upon oath by the defendant—was not successful and did not lead to the building of a new and peaceful Europe.

The same peaceful tendencies and intentions continued to be uppermost in the defendant's policy during the years 1936-1937, in spite of all disappointments. Evidence of this is, above all, the treaty between the German Reich and Austria, which was concluded on 11 July 1936, as the result of negotiations which had been conducted for some time by the Defendant Von Papen. Not only the defendant's own testimony but also the testimony of the witnesses Köpke and Dieckhoff proves beyond doubt that the view on the Austrian question, which from the very beginning the defendant consistently held and supported, was this: closer co-operation between the two countries—both in the political and particularly in the economic field—must indeed be aimed at, but Austria's independence must, under all circumstances, be respected and remain untouched. For that reason, the defendant was an implacable opponent of any German attempts to interfere in the internal politics of Austria, and of the attempts of the Party to support the Austrian National Socialists in their fight against the Austrian Governments of Dollfuss and Schuschnigg; and he again and again protested to Hitler against them, not without success. That he, this Christian-minded and honorable man, abhorred and condemned the murder of Dollfuss from the bottom of his heart, I need not emphasize. And exactly from that point of view he welcomed the agreement of 11 July 1936, since it so fully corresponded to his own opinions. This alone refutes the assertion of the Prosecution that the agreement was concluded with intent to defraud—that is, with the intention to lull the Austrian Government into security and thereby to prepare and facilitate for the future the real intention already existing at that time—namely, to incorporate Austria by force into the German Reich.

The absolute sincerity and honesty of the defendant during the conclusion of the agreement is confirmed by the sworn testimony of the then Austrian Foreign Minister Dr. Guido Schmidt. And that the Defendant Von Neurath had no reason to doubt Hitler's honesty and sincerity with regard to this treaty was shown quite irrefutably by the witness Köpke, who confirmed Hitler's statements to the

British Foreign Secretary Simon during his visit to Berlin in March 1935; the defendant himself gave evidence that, immediately after the conclusion of the agreement, Hitler told the leaders of the Austrian National Socialists Rainer and Globocznik that it was their duty and the duty of the Austrian Nazis to adhere strictly to this agreement. And so, from his viewpoint, the defendant considered this agreement as another step on the road toward peace in Europe, since the recognition of Austria's independence, which he had pronounced in the agreement, eliminated the European danger point inherent in the Austrian problem.

In the same way, the defendant worked for an improvement of the relations between Germany and the Czechoslovakian Republic. It was only with this aim in mind that he so often pointed out to the Czechoslovak Ambassador Dr. Mastny that the Czechoslovak Government must at last meet the demands of the Sudeten Germans, still very moderate at that time, which were based on a promise once given by the Czechoslovak Government in Versailles, but not kept. Nothing, however, was further from the defendant's mind, in both the Austrian and the Czechoslovak question, than the idea of a solution of these questions by force, a solution which later, after the defendant had left his position as Foreign Minister, Hitler considered right.

And his efforts to improve the relations between the Reich and the southeastern European nations also did not serve any aggressive intentions or even plans to partition Czechoslovakia with the help of these nations. If in Messersmith's affidavit it is alleged that in order to secure this aim Germany had promised to the southeastern states, and also to Poland, parts of Czechoslovakia and even of Austria, then these are entirely absurd ideas which do not contain a word of truth. What the true value of these assertions is becomes clear from the fact that the Prosecution have not been able to submit a single report from one of the diplomats of the Western Powers accredited in the states in question, which could confirm the accuracy of these assertions. Was only Mr. Messersmith clever enough to obtain knowledge of such plans? In reality, the defendant's efforts and his trip to Budapest, Belgrade, and Sofia served only peaceful purposes—namely, the exchange and strengthening of economic relations between Germany and these states. As the testimony of the witness Köpke showed, the defendant was particularly interested in these efforts, and they influenced his policies.

How much he opposed any policy which seemed to him even remotely out of line with his own policy of peace and international reconciliation is best proved by the fact that he rejected the negotiations with Japan, which the Defendant Von Ribbentrop had entered into and conducted in London without his assistance and

completely independent of him on direct instructions from Hitler, and also the Anti-Comintern Pact which was finally concluded with Japan. He expressed his opposition clearly by refusing to sign this pact, and it was, as is well known, signed by Herr Von Ribbentrop as Ambassador, which was a most unusual procedure. The objection of the defendant to this kind of policy could hardly find a stronger form of expression.

The Defendant Von Neurath adhered faithfully and unflinchingly to his consistent peace policy up to the last moment, in spite of the influences of other circles—especially Party circles—on Hitler which made themselves felt during the defendant's last years in office. He hoped, until the last moment, that he would be able to check these influences successfully, to eliminate them and to continue directing the policies of Germany along peaceful lines, according to his own convictions and his promise to Hindenburg.

When Hitler's speech on 5 November 1937, and the defendant's subsequent conversation with Hitler about it, forced him in 1938 to the conclusion that he no longer had any influence on Hitler, that Hitler would no longer shrink back from aggressive, warlike measures, he immediately took the consequences and submitted his resignation, which was accepted. His task, entrusted to him by Hindenburg, had become impossible to fulfill. He would not, and could not, have anything to do with a policy which did not shrink from warlike measures. It was completely out of the question for him to endorse such a policy with his name; it would have been the negation of his entire life work; he would have betrayed himself and his people.

But this did not mean that the defendant, who placed the welfare of his people above everything, even above all his personal interests and desires, would not make himself available again if the need arose, or if he believed that he would be able to save Germany from warlike complications, for that was the danger of the policy which Hitler now directed along a line different from that of the defendant. This attitude of the defendant readily explains why, when Hitler summoned him on 11 March 1938 to inform him of the march of German troops into Austria and, because Reich Foreign Minister Von Ribbentrop was away in London, to ask him to advise him and to answer the note of protest from the British Embassy, he declared himself willing to do so.

If the Prosecution now charge that the contents of this answer were factually incorrect, the following must be pointed out in response. In this letter the defendant only stated what Hitler himself had told him about the events. The defendant himself knew just as little about the actual events as the rest of the world, since after his resignation as Foreign Minister he no longer received

political information of any sort. Hitler's announcement that German troops were marching in surprised him just as much as it surprised everybody else, and as the order for it had surprised even the highest commander of the German Armed Forces, which Henderson himself admits in his well-known book, wherein he adds that Hitler's decision to march in could have been made only a few days before. There was even less reason for him to doubt the accuracy of the description which Hitler had given him of the preceding events, because he had given it in the presence of Göring who had not contradicted it. It did not even occur to him—because of his own upright and true nature, and because of his entire previous official activity under clean and honest governments—that the head of the State, Hitler, could lie to him and at such an important moment, for the purpose of answering the British note of protest, give him information which was bound within a very short time to be proved manifestly incorrect. And whom could he really have consulted? Only very few men besides Göring had real knowledge; but those he could not approach, because they were not in Berlin. Göring did not contradict Hitler's description.

I particularly want to point out that the reply which the defendant authorized to be drafted on the basis of Hitler's description, and for which he also did not use the letterhead of the Ministry of Foreign Affairs, was not signed by him in his own name nor on behalf of the absent Foreign Minister but, as the wording of the document discloses, the description of the events was forwarded by him on the order of the Reich Government. But the Reich Government was Hitler, or rather on that day Göring. He, therefore, made perfectly plain that he was not writing in his own name, on his own responsibility, but that like an attorney, he was only forwarding information of a third person—namely Hitler. He really cannot be reproached for not having doubted the accuracy of this information and for not having checked the official description of the head of the State—and Hitler was, after all, the head of the State—quite apart from the fact that he would not have been in a position to check it.

He also cannot be reproached for the statement which he made a short time later to the Czechoslovak Ambassador Dr. Mastny. In the first place, according to the sworn statement of the defendant, the discussion in question took place in a way rather different from that described in the report of Ambassador Dr. Mastny, which apparently aimed at greater emphasis and effect. But, in any case, the penultimate paragraph of this report—Document Book 5, Document Neurath-141—shows clearly that even Mastny interpreted and understood the statement of the defendant that Hitler had no intention of attacking Czechoslovakia and, now as before, considered

himself bound by the provisions of the agreement of arbitration which offered no guarantee for ever after but only for the immediate future; that is, until the action against Austria had been terminated. In view of the insufficient preparations of the Wehrmacht for a war, confirmed here by the Defendant Jodl, there was absolutely no reason to doubt the accuracy of this statement; that is, to doubt that it actually corresponded to Hitler's wish at the time, in spite of the references of the Prosecution to Hitler's statements, in his speech on 5 November 1937, about the conquest of Austria and Czechoslovakia. For these statements referred only to the possibility of war with other states and to a much later period.

So the accusations raised by the Prosecution against the defendant on this point are also unfounded. That already a few months after his speech on 5 November 1937 Hitler decided to incorporate Austria into Germany came as a surprise to all, even to his closest collaborators. This decision, however, was taken not only on the basis of developments in Austria, but most likely not least on the basis of conferences between Hitler, the defendant, and Lord Halifax, the then Lord President of the Council, in November and December 1937, in which, according to the sworn statement of the defendant, Lord Halifax declared that the British people would not understand why they should enter a war because two German countries had united.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

DR. VON LÜDINGHAUSEN: Once more, in the autumn of 1938, the Defendant Von Neurath took it upon himself to stem the tide of events in order to spare the German people the immediate danger of war. In view of the corroboratory testimony of Göring and other witnesses, I need not describe in detail how the Munich conference, toward the end of September 1938, had come about. The fact remains that it was held and was successful—I refer to the agreement with Britain and France on the Sudeten question—and this was due in no small measure to the initiative and cooperation of the defendant.

If, however, he was able to accomplish this, it is because of a circumstance which the Prosecution, completely misunderstanding the situation, now include among the accusations—namely, that upon his resignation as Foreign Minister he was appointed President of the Secret Cabinet Council, which had been newly created by Hitler at this time. Had he not been in this position it would not have been at all possible for him to get to see Hitler in September 1938 and persuade him to agree to the Munich conference; for, contrary to the allegation of the Prosecution, even though he kept the title of Reich Minister from the day he resigned as Foreign Minister, he was no longer a member of the Reich Cabinet, which is already shown by the fact that from that day on his salary was decreased by one-third. Any joint responsibility which the defendant might have had for the policy of the Reich ceased as from that day; for, contrary to the assertion of the Prosecution, as President of the Secret Cabinet Council he was not a member of the Reich Cabinet and had no access to it, let alone a seat or a vote in the Cabinet sessions. This is established beyond doubt by the very wording of Hitler's decree whereby this Secret Cabinet Council was created; for there it says expressly that the sole purpose of this Secret Cabinet Council was to advise the Führer personally—that is, Hitler alone—and only on questions concerning foreign policy. Even Huber's book *Verfassungsrecht des Grossdeutschen Reiches,* quoted by the Prosecution under Document 1744-PS in their attempt to prove the contrary, shows that the Secret Cabinet Council and its President had nothing whatsoever to do with the Reich Cabinet, and was not a branch or an organ of it, but only one of several of the Führer's personal offices.

As had been shown by the testimony of Göring, Lammers, and other witnesses, the Secret Cabinet Council never really functioned, and was never meant to function. In point of fact, all that was intended was to bestow a personal honor on the defendant, and

thus efface the impression that differences had arisen between him and Hitler. That he himself did not look upon his appointment in any other way is proved by the fact that after 4 February 1938 the defendant lived a life of leisure on his own estate in Württemberg as a private citizen, and went only very rarely to Berlin where, however, he was not and could not have been active in any official capacity, since all information as to what was happening in the Foreign Ministry was deliberately kept from him.

If the Prosecution believe that they are able to conclude, from the documents submitted under Number 3945-PS, that the defendant received sums of money from the Reich, or the Reich Chancellery, for obtaining diplomatic information, then—apart from the defendant's own testimony under oath—this is refuted by a letter among these documents, dated 31 May 1939, from Amtsrat Koeppen, the head of the office of the Secret Cabinet Council, which was kept going merely for the sake of appearances—a letter which proves conclusively that these not very large payments at long intervals were for covering the cost of maintaining this office, and were not intended for purposes of secret information.

And if the defendant made no use of his position as President of this Secret Cabinet Council—except for this one occasion in September 1938—he made just as little use of his position as a member of the Reich Defense Council, to which he was appointed by the Reich Defense Laws. Here, too, the Prosecution err when they make use of this membership to accuse the defendant of warlike intentions or of promoting such intentions.

Since this Reich Defense Council has already been discussed so much during the hearing of the evidence, I believe there is no need for me to examine more closely this assertion of the Prosecution, and that I can limit myself to pointing out that no aggressive tendencies of any kind were embodied in these Reich Defense Laws; but that, on the contrary, as their contents state, they merely contain—as is the custom in any country which has to reckon with the possibility of a war—the necessary provisions in the event of the Reich's being attacked, or being drawn into a war in some other manner. How one can deduce from them that the defendant had warlike intentions, or planned for war, is utterly incomprehensible. Moreover, the defendant did not take part in a single one of the meetings of this Council, and no reports about the decisions of this Council were ever forwarded to him. The Document 2194-PS, submitted by the Prosecution as alleged counterevidence, was not sent to the defendant at all, but to a department of the Reich Ministry of Transportation attached to the Government of the Protectorate—namely, the transport department—and was intended for the latter. Also the sender of the

document was not the Reich Defense Council, but the Ministry for Economy and Labor of Saxony.

All these and similar efforts will never enable the Prosecution to prove that the defendant, by his policies, was at any time directly or indirectly guilty of a crime of planning or preparing an aggressive war, or even of approving or supporting such a war. Quite the contrary. All his efforts were directed to one end, and one end only: to attain by peaceful means and in a peaceful way only those aims which had been sought by all former democratic Governments after 1919—namely, the removal of the provisions of the Versailles Treaty which discriminated against Germany and stamped the German Reich as a second-rate power, and the bringing about of a general pacification of Europe. Not one of his diplomatic actions served any other purpose, or was performed with any intention which would imply a crime in the sense of the Charter. It is not surprising, therefore, that his resignation as Reich Foreign Minister was received by the whole world with anxiety and dismay, both outside Germany—I refer to the statement of the witness Dieckhoff—as well as inside Germany, and especially in conservative circles. This alone serves to prove that the assertion of the Prosecution, that he was active in these circles as a fifth columnist, is untrue.

All the Prosecution's references to Hitler's speech to his generals in November 1939, and still less to the speeches by the defendant himself of 29 August and 31 October 1937, will alter none of those facts. Hitler's speech was made at the time of the first military successes and was calculated to vindicate Hitler's state leadership, and should be taken at its face value. The speeches made by the defendant, however, say just the opposite of what the Prosecution see fit to put into them. For both speeches, Numbers 126 and 128 in my Document Book 4, stress quite clearly the success of the peaceful intentions of the German foreign policy conducted by the defendant, and lay particular emphasis on the fact that the results were obtained entirely by peaceful means, and not by means of force. In particular, the speech of 31 October 1937, the last public speech of the defendant as Foreign Minister, is actually a résumé of his peace policy. That this was and still is a correct résumé, the Prosecution themselves have had to admit in this Court—that Hitler's speech of 5 November 1937, which was used by my client as an excuse for his resignation, was, as described by a member of the Prosecution, the turning point in German foreign policy. Thus the Prosecution acknowledged unequivocally that up to that day German foreign policy had not been an aggressive policy of force, or pursued any warlike plans or schemes, but had been peaceful throughout.

Indeed it could not have been otherwise, in view of the defendant's political and humane creed; and this has been unanimously confirmed by all witnesses examined here and in all of the questionnaires and affidavits in my document books. This creed was built on three main pillars: love of men, love of the fatherland, and love of peace—all three springing from and sustained by a deep sense of responsibility toward himself, toward his God, and toward his people.

When, a few days after the occupation of Czechoslovakia, Hitler called the defendant to Vienna from his well-deserved *otium cum dignitate* on his estate, and told him that he had been selected as Reich Protector for Bohemia and Moravia, it was this same sense of responsibility which made him feel it his duty to accept this post. At first he was opposed to the idea and struggled long with himself, for he had always been an inveterate opponent of any interference in the affairs of other nations, let alone the more or less forcible annexation of a country to the German Reich. It was for this reason that he had also condemned the annexation of Czechoslovakia and the so-called protection pact concluded with President Hacha, although at this time he had not the slightest idea of how this really came about. He got to know the true facts of this incident for the first time here in Nuremberg.

In spite of his reluctance to accept a public office once more, especially at his age, and to serve again under Hitler and his regime of which he heartily disapproved, his sense of responsibility toward his people and his humane principles persuaded him that it would be wrong to refuse this mission. When Hitler explained to him that he had chosen him as being the only man possessing the necessary qualities to reconcile the Czechoslovakian people with the new conditions and with the German people—which Hitler said was his desire—he could not fail to recognize that the task given him was one which, in the interests of the German people, of humanity, and of international understanding, he ought not to refuse. And was it not indeed a task worthy of the utmost effort, to appease by just government and humane treatment a people who would regard every restriction and encroachment on their liberty and independence as the worst injustice that could be done them, and who would be filled with mortal hatred and resentment toward a people they felt to be an intolerable oppressor, and to reconcile them with these very people and the conditions for which they were directly responsible? But was not this aim in line with the endeavor to insure and preserve peace, which clearly and unequivocally pervaded his whole foreign policy? And he had every justification for telling himself that if he refused this task, then another man from Hitler's

entourage would in all probability be nominated Reich Protector, who would be neither able nor willing to conciliate the Czech people by humane and just treatment, but who, on the contrary, would be more inclined to hold them down by force and terror, as indeed happened 2½ years later.

Such were the only thoughts and considerations which led him to accept the appointment offered him, setting aside all personal interests and willing to face the risk that this might be interpreted and held against him in some quarters as denoting approval and support of Hitler and his regime—for Hitler had made him the definite and firm promise that he would at all times be willing to support the defendant's intended policy of appeasement and reconciliation for the Czech people through humane and just treatment and through safeguarding the interests of the Czech people to the greatest extent.

He was fully aware that the task which he had accepted was a difficult one. I do not hesitate to admit that it was here a question of a decision, the justification of which could—if one admits the point of view put forward here by the British prosecutor that it was immoral to remain in a government which should be repudiated because of its amorality—cause embarrassment in the judgment of a man whose thoughts and dealings were different from those of the Defendant Von Neurath. But having in mind the character of Herr Von Neurath, which I hope has been described to you clearly enough, and his deep sense of responsibility, this decision was the only possible and logical one. It is a veritable tragedy, resembling those of the ancient Greeks, that the failure of this mission, which had been undertaken with only the highest ethical motives, should have brought the Defendant Von Neurath into this dock.

But at this point now, I should like to make the following comments on the Prosecution's attempt by means of the photostatic documents which they submitted under Document 3859-PS—consisting of a letter from the defendant to the Chief of the Reich Chancellery Lammers, dated 31 August 1940, and its alleged enclosures—to discredit the defendant's assertion that in assuming his office as Reich Protector his sole aim was to appease and reconcile the Czech people by safeguarding to the utmost their interests and their national traditions, and thus work for the well-being of this people and their prosperity as a nation. I believe that the second examination of the defendant, which the Tribunal, in their readiness to help, granted to me, has proved that those documents, particularly the two reports attached to the letter to Lammers—which indeed, with regard to the question of the Germanization of the

Czech people, cannot be reconciled with the intentions and tendencies of the defendant as mentioned above—have no evidentiary value. Not only do those photostatic copies in no way tally—and the defendant has made a definite statement to this effect—with the contents and the form—that is, the length of the originals attached to the letter to Lammers, and which had been submitted to the defendant for signature and approved by him—but the photostatic copies also give rise in several places to well-founded doubts as to whether they are really identical with the enclosures to the letter addressed to Lammers, and this owing to the following facts.

Contrary to the practice adopted by all administration offices, neither of the photostatic copies bears the reference number of the letter to Lammers, or even a note that they are enclosures to a third document, let alone to the Lammers letter. Neither does the photostatic copy of the first report bear the defendant's signature which, according to his definite statement, when he signed the letter to Lammers, he added to the report enclosed with it, which report had been drawn up by himself or by his office according to his instructions, and submitted to him in a fair copy. Another thing which strikes one is that it only bears a correction note of the copy which should have been, but actually was not, signed by an SS Obersturmführer working in the office of State Secretary Frank.

These facts support the defendant's assertion that, if the reports from which the photostatic copies have been made were in fact annexed to the Lammers letter, they have been substituted for the original report of the defendant and for Frank's report—the draft of which was approved by the defendant in the office of State Secretary Frank which was entrusted with the dispatch—either by the latter or by his orders. Furthermore, the defendant's statement, made by him in order to explain the purpose of this Lammers letter and its enclosures, is quite worthy of belief: namely, in the same way as was intended by the plan contained in General Friderici's report—dated 15 October 1940, submitted under Exhibit USA-65, Document L-150—to induce Hitler by reporting verbally to him, and on the basis of the two reports sent, to abstain from dividing the Protectorate territory and from germanizing the Czech people in any way whatever, and to prohibit any such plans, a course which the defendant repudiated for many reasons, but chiefly because he had at heart the interests of the Czech nation, which had been entrusted to him, and its national character and unity. These assertions of the defendant are confirmed by the statements of the witness Von Holleben in the questionnaire answered by him,—Document Book 5, Document Neurath-156—of the witness Dr. Von Burgsdorff, as well as by the

defendant's letter to Baroness Ritter—quoted in her affidavit, Document Book 1, Document Neurath-3.

And the defendant has actually succeeded in carrying his point, as shown by Ziemke's report on his conversation with Hitler, submitted by the Prosecution. As long as he was in Prague, no measures were taken to germanize the Czech people; the defendant even prohibited the discussion of this entire question, as shown by Document 3862-PS submitted by the Prosecution. Especially by preventing any division of the Protectorate territory and any more or less forcible Germanization of the Czech nation according to plan, the defendant has proved, in the most striking manner, the sincerity of his aims and endeavors to protect and preserve the Czech people, their national traits, and their national unity and character, in conformity with his principles and intentions as stated publicly in his article on the New Order in Central Europe, reproduced by the *Frankfurter Zeitung* of 30 March 1939—Document Book 5, Neurath-143—which set forth his line of conduct for the accomplishment of his task.

In this article he himself describes his task as a fine one, but at the same time a difficult one. How difficult it really was—how nearly impossible—was to become obvious, unfortunately, only too soon.

Chief among the reasons for this was that from the beginning not only were the full powers in the Protectorate not transferred to the Reich Protector, not only was he not given the sole executive and controlling position—quite apart from his subordination to Hitler—but also his competency and powers were not sufficiently clearly defined. It is true that Hitler's decree of 16 March 1939, establishing the Protectorate, and the supplementary decree of 22 March 1939—Document Book 5, Documents Neurath-144 and 145—had specified that the Reich Protector was subordinate to the Führer and Reich Chancellor, that he was to be the sole representative of the Führer and the Reich Government, and was to receive his directives from the Führer and Reich Chancellor. But, at the same time, not only were certain administrative branches, such as the Armed Forces, communications, the postal, telegraphic and telephone services, removed from his control at the very beginning, but the Reich Government—that is, the Reich—had also been given the right to take under its own so-called "reichseigene" jurisdiction, in the administration of the Reich proper and independent of the Reich Protector, those administrative branches which actually were Reich Protector offices, and to establish, if necessary, Reich offices which did not fall within the Reich Protector's competence. The Reich was also given the right to take measures necessary for security and order in the Protectorate over the head of the Reich

Protector himself. Furthermore—and this is the most important point of all—every one of the many supreme Reich authorities—that is, not only the Reich Ministries but, for instance, the Reichsbank, the Four Year Plan, the Ministerial Council for Defense of the Reich, and others—was given the right to decree laws and organizational measures on its own authority, quite independently of the Reich Protector and, therefore, could interfere in these administrative branches which actually were to come within the jurisdiction of the Reich Protector without the Reich Protector having either the right or the possibility to protest against or prevent such decrees or measures should they be in opposition to his own decrees, measures, and policy. On the contrary, he was bound not only to publish them in the Protectorate if asked to do so but also to supervise their execution.

Therefore, the position of the Reich Protector was, to use an example by way of explanation, by no means the same as that of the British Viceroy in India; it was more like the position—though to outward appearances on a somewhat higher level—of a Reichsstatthalter or the Oberpräsident. Therefore, it was different from what had hitherto been understood constitutionally by a protectorate; nor could it be otherwise, because this so-called Protectorate of Bohemia and Moravia belonged, according to Article 1 of the above-mentioned decree of 16 March 1939,—and to this I wish to draw particular attention here—to the territory of the German Reich—that is to say, it was a part of the German Reich. And it only had a certain amount of independent authority, a limited autonomy within the Reich, so that the laws and regulations valid in the rest of the Reich territory were introduced into the Protectorate as a matter of course. It was quite obvious that this vague and loosely defined limitation of the powers and competence of the Reich Protector was bound to lead very soon to the greatest difficulties, difficulties not only in the way of a uniform policy, uniformly conceived and directed, but difficulties which prevented the defendant himself, as Reich Protector, from governing in the way he wished and from keeping to the course already taken, difficulties and reverses which became more and more acute in the course of time.

In view of all this, it follows that the responsibility of the defendant can only be judged against this background—that is, only by taking into account the power exerted by these many other authorities. He can never be held responsible for decrees, measures, and actions which he did not decree or order himself, but which were decreed without his co-operation, without his knowledge, even against his will, by authorities or other offices outside his sphere of power and influence—decrees, measures, and

actions which he had neither the right nor the power to prevent, and for which he was at most an intermediary, a link in the chain.

This is especially relevant for the accusation of joint responsibility brought against him by the Czech Prosecution—Document USSR-60(a)—for all the actions of Hitler and of the Reich Government before and after the setting up of the Protectorate. The Prosecution take as basis for their assertion the fact that Herr Von Neurath, after having given up his post as Reich Foreign Minister, remained a member of the Reich Cabinet—whereas in fact this is incorrect. I have already proved elsewhere beyond all doubt that he was not a member of the Reich Cabinet, either as a Minister without Portfolio or as President of the Secret Cabinet Council; nor was he a member of the Reich Cabinet as Reich Protector. That, too, is certain, and has never been maintained by the Prosecution before this Court. Therewith, any joint responsibility of the defendant for any actions or measures which preceded or prepared the way for the setting up of the Protectorate is disproved. Also I have already proved elsewhere that his statement to the Czechoslovak Ambassador on 12 March 1938, which has been used by the Prosecution in support of their allegation that this prepared the way, was not false, not deceitful, and therefore was not an action which prepared the way for the invasion of Czechoslovakia.

If the Czech Prosecution further deduce from Article 5 of the above-mentioned decree of 16 March 1939 that, as Reich Protector, he was wholly responsible for everything that occurred in the Protectorate during the time he was in office—that is, from 17 March 1939 to 27 September 1941—then this conclusion also is wrong and factually incorrect, in view of the actual position with regard to the division of powers in the Protectorate, as explained above. There is no system of law in the world according to which one can charge a person with criminal responsibility for occurrences and acts by third persons, acts in which he did not participate or co-operate, or which even occurred against his will.

Thus he cannot be made responsible for the fixing of the rate of exchange between the Reichsmark and the Czech crown, because this rate had already been fixed when he took over office; neither had he any hand in fixing it, nor had he the power or right to change the rate of exchange—quite apart from the question, which we need not discusss here, of whether, as the Prosecution maintain without producing proofs, the rate of exchange really was detrimental to the Czech people or not. Incidentally, I need hardly say that even if this had been the case, it would not be a crime according to the Charter, and only as such would it be punishable.

Nor can he be made responsible for the setting up of the customs union and putting it into practice. This had already been

laid down in Article 9 of the decree of 16 March 1939, which reads, "The Protectorate belongs to the customs area of the German Reich and is subject to its customs sovereignty." This regulation was a natural consequence of the fact, which I have already stressed, that the Protectorate was a part of the territory of the German Reich. However, I would like to draw special attention here to the fact that the defendant, because he regarded the inclusion of the Protectorate into the customs area—the customs sovereignty of the Reich—as detrimental and harmful to Czech economy, managed to prevent this inclusion for a year and a half, until October 1940, in spite of all the pressure exerted by the Reich Finance Minister, which is clear proof that the defendant put the interests of the Czech people, who had been entrusted to him, above the interests of the German Reich. He had absolutely nothing to do with the economic measures for the alleged transfer of Czech banks and industrial undertakings nor with filling the key positions with Germans. Those measures were taken by other offices—especially by the Reichsbank and the Delegate for the Four Year Plan—behind his back and without his collaboration. These were merely the natural consequences of the fact that already in earlier days a very large amount of German capital had been invested in these banks and undertakings, and this capital increased after the occupation because the credits given by the other countries were withdrawn by them and were now granted by German firms.

Lastly, he had nothing whatever to do with the judiciary. This was exclusively under the control of the Reich Ministry of Justice. This alone set up the German courts, including summary courts-martial, and the prosecuting authority; it alone appointed judges and prosecutors. Herr Von Neurath himself had nothing to do with these appointments and still less with the jurisdiction of the courts, as is clearly shown by the ordinances and decrees by which they were set up, especially the decree concerning the practice of criminal jurisdiction, of 14 April 1939,—Document Book 5, Document Neurath-147.

Here again I must draw attention to the fact that neither the economic measures nor the setting up of German courts in the Protectorate, which was a part of the German Reich, can even remotely fall under the category of crimes enumerated by this Charter. And this applies equally to the alleged intrusions into the Czech educational system, the appointment of German school inspectors, measures with which the defendant has been charged in the Czech indictment. These measures also were not taken by him, but by the German Reich Ministry for Education. And the closing of a larger number of Czech secondary schools was not ordered by the defendant, nor by order of the German Reich

Ministry, but by the Czech Government itself even if it did so at the suggestion of the defendant. This measure turned out to be a useful one, and was in the interests of the Czech youth and, therefore, of the Czech intelligentsia and people because it obviated the danger of the formation and growth of a large well-educated proletariat. After the incorporation of the Sudeten German territory into the German Reich in the autumn of 1938 this danger had become acute, for a very large number of Czech officials and members of the free professions had streamed into the territory of the Protectorate, with the result that because of the overcrowding of all professions and the diminution of the Protectorate territory owing to the separation of the Sudeten territory and Slovakia, the chances of finding employment for the pupils leaving the secondary schools were still further diminished.

In addition to this came the closing of universities in the middle of November 1939 upon personal order of Hitler. The Czech Government could not shut its eyes to the truth of these considerations of the defendant, and itself decreed the closing of quite a number of schools. The defendant did not exercise any pressure on the Czech Government. This has been proved by the evidence. The dissolution of Czech gymnastic and sport clubs and similar organizations, however, as well as the confiscation and the use of their assets, was ordered, without knowledge or participation of the defendant, by the Police, which was not under his jurisdiction. It is not even certain, by the way, whether this dissolution took place while the defendant was holding office or only after his departure. The dissolution of the Sokol, it must be said, was a real necessity for the protection of German interests, and moreover it was a measure which was taken to appease and reconcile the Czech nation, too; for the Sokol was, beyond doubt, the focus of all anti-German efforts and of the incitement of the Czech people toward an active resistance against everything which was German.

The preceding arguments show how manifold were the encroachments of other administrations and offices on the administration of the Protectorate, and, accordingly, the difficulties and resistance which arose against a uniform policy of the defendant. They were, however, by no means removed, but, on the contrary, aggravated by the decree of 1 September 1939 concerning the organization of administration and the German Security Police--Document Book 5, Document Neurath-149. This decree was issued, without previous consultation with the defendant, by the Ministerial Council for the Reich Defense. Its first part especially is obscure and misleading. True, it placed all German administration offices and their officials in the Protectorate under the control of the Reich Protector, but this subordination was a formal one only, that is, simply on paper and

not an actual one in view of the administrative duties which were actually performed.

In this respect, things remained unchanged, as had already been indicated from the authority of the supreme Reich offices, according to Article 11 of the decree of 16 March 1939 and of the ordinance of 22 March 1939. The difference was only that from now on all administrations and offices, established or to be established by other offices, were formally attached to the Reich Protector's office and took up their functions under the official designation of "The Reich Protector of Bohemia and Moravia." However, this by no means insured that such attached departments were put, in fact, under control of the Reich Protector himself—that is, the defendant—and that they had to receive from him their factual directives and orders to work according to his views and his directives. On the contrary, they received their instructions, just as before, from their original Reich offices, and had to observe and obey them. For instance, the so-called transportation department under the Reich Protector which had to deal with the transportation system—already taken out of the Reich Protector's jurisdiction by ordinance of 16 March 1939—was controlled just as before by the Reich Ministry of Transportation and not by the Reich Protector, and received instructions not from him but from the Ministry in Berlin. And the same applied to other sectors, also including the purely internal administration.

According to this ordinance of 1 September 1939 of the Ministerial Council for the Reich Defense—and not, as the Czech prosecutor erroneously contends, by a decree of the defendant—a new plan was undertaken for the Protectorate territory with Oberlandratsbezirke and the Oberlandrat at their head, which official is, according to Paragraph 6 of the ordinance, the competent administrator for all administration branches of the internal administration and subordinate to the Reich Protector in an administrative sense. As such, he was invested with far-reaching authority, and also supervised the Czech authorities in the Protectorate, and this, to be sure, not by the order of the Reich Protector, but of the pertinent Reich Ministry in Berlin. This, too, was bound to result in very serious differences between the measures taken by those Oberlandräte on the basis of the directives issued to them by the Reich Ministry of the Interior in Berlin and the policy pursued by the defendant. To what extent the latter affected and influenced the Czech administrative offices does not have to be taken into consideration, since this decree, too, and its result, the control of the activities of the Czech administrative authorities by Reich German officials, is not a crime punishable according to the Charter of this Tribunal. This decree, too, is only a result of the fact that the Protectorate belonged to the German Reich.

On the other hand, this decree clarified the question of the position of the Police within the Protectorate territory, the political as well as the Security Police. This question was quite unsettled until the decree came into force and from the very first day of his activity had led to differences and difficulties between Herr Von Neurath and his State Secretary Frank.

At the time when Hitler charged the defendant with the office of the Reich Protector he had, according to the defendant's testimony, assured him of far-reaching power, especially for protecting and fully supporting the defendant's intended policy of conciliation and compromise in opposition to radical aims of the Party and other chauvinistic circles. The defendant deduced from this that as the representative of the Führer in the Protectorate he must and would have a decisive influence on the activity of the Police also. According to his own testimony he could not visualize at that time that a large part of the sphere of activity accepted by him became illusory from the start, since the Police had not been from the outset expressly subordinated to him. However, due to the fact that Frank—who had been made Higher SS and Police Führer in the Protectorate—was at the same time appointed to the position of State Secretary, and as such was subordinated to him, the defendant felt entitled to assume that Hitler's intention was to centralize the police authority, if not in his own hands, at least under his jurisdiction—that is, in the hands of his State Secretary. In practice, however, this relation worked out entirely differently, since State Secretary Frank had not the slightest intention of letting his official chief, the defendant, have any authority whatsoever over the Police, and recognized only the jurisdiction and authority of Himmler, his superior, as SS and Police Leader, or of his Reich Main Security Office (Reichssicherheitshauptamt).

This actual state of affairs was established by law in the decree of 1 September 1939. For this decree unequivocally states that the German Security Police, and thereby also the Gestapo, was not subordinated to the Reich Protector. This is already evident, in itself, from the fact that the decree completely separates the two departmental spheres—administration and Police—by dealing in Part 1 with the building up of a German administration in the Protectorate subordinated to the Reich Protector, and then dealing separately in Part II with the German Security Police. This Security Police is not under the jurisdiction of the Reich Protector, but, as was already reserved in Article V, Paragraph 5, of the decree of 16 March 1939, is taken over by the administration of the Reich itself—that is to say, it receives its orders directly from the Chief of Police in Berlin—that is, Himmler—and in part also from the Higher SS and Police Leader in Prague.

The second sentence of Paragraph 2 describes the relationship of the Police toward the Reich Protector. Its wording is as follows:

"The organs of the German Security Police are to collect and make use of the results of their investigations, in order to notify the Reich Protector and his subordinated offices about important events, and to keep him informed and offer suggestions."

This signifies that the Reich Protector legally could not actually influence the activities of the Police in any form whatsoever. He could not oppose their orders, emanating from Berlin, prior to their execution; quite apart from the fact that he never got to see them, he had no authority whatsoever to oppose them. He had but one claim and that was to be subsequently informed by the Police about measures already taken by them and even that happened—as was proved by the evidence—only in the rarest cases. He himself did not have any right or any possibility whatsoever of issuing orders to the Police.

In consequence of this separation of powers, and in view of the totally different attitude of Frank toward the Czech people in contrast with Herr Von Neurath, the sharpest differences and contradictions were inevitably bound to crop up from the very beginning. For Frank, as a Sudeten German and one of the leaders of the Sudeten Germans, was filled with hatred and revenge against anything that was Czech. He did not want to hear of a reconciliation or an understanding between the German and the Czech peoples, and gave free rein to this anti-Czech attitude from the first day of his activity.

At first—that is to say, up to the time of the outbreak of the war—the activity of the Police was actually slight, so that these opposing viewpoints did not become so apparent. Herr Von Neurath could consequently assume that this opposition would gradually diminish, and that Frank would conform to his wishes and aims, and would show himself to be accommodating; and he, the defendant, did not yet recognize the necessity of exerting influence upon the Police. When, however, he finally realized—from the gradually increasing activity of the Police and their excesses—that his expectations were not being fulfilled, he protested to Hitler orally and by letter, time and time again—as confirmed by the testimony of the witnesses Dr. Völckers and Von Holleben—and implored him to alter this ominous state of affairs, and to subordinate the Police to him, and to him only. However, all of Hitler's promises and assurances proved to be false, and the subordination of the Police to Herr Von Neurath did not take place.

Yet, he did not want to relinquish the fight so soon, nor despair of the task he had undertaken. Now, more than ever, he wanted

to try to impose his ideas and policy and, should he not be successful in major as well as in minor issues, at least try to soften the measures taken by the Police. For this purpose he had the most detailed accounts given to him personally in all cases of measures and action taken by the Police, such as arrests and other excesses, insofar as he received information about them mostly from Czech sources. Wherever he could, he exerted his influence for the release of arrested persons. This is evident from the testimony of all witnesses produced by me, above all, from the testimony of Dr. Völckers who, as head of the defendant's office, was continually engaged in receiving such complaints. This is moreover evident from documents submitted by the Prosecution themselves, such as the notes of the defendant about his conference with President Hacha of 26 March 1940—Appendix 5 to Supplement Number 1, USSR-60—and even from the testimony of Bienert—who himself was arrested by the Police but released in a very short time upon the intervention of the defendant.

With the one exception of the testimony of Frank of 7 March 1946, submitted during the hearing of evidence, the testimony of all witnesses corresponds on the question of responsibility of the defendant for the measures taken by the Police. Frank's testimony, however, is in direct contradiction to his own earlier testimony. At his interrogation on 30 May 1945—Document Book 5, Document Neurath-153—Frank said the following, and I quote:

> "The Police, however, was not under the control of the offices of the Reich Protector.... Both Gestapo and Security Police received their directions and orders directly from the Reich Main Security Office in Berlin."

Frank's statement of 5 May 1945 concerning the student riots—Document Book 5, Document Neurath-152—is also typical of the manner in which the Police received its instructions directly from Berlin, over the head of the Reich Protector. Frank speaks therein of the report on the first demonstrations, which he had sent to Berlin, and in which he had asked for instructions; he had received them by return mail from the Führer's headquarters through the Security Police in Prague, to which office they had been sent by Berlin directly and he, Frank, received them from there. There is no mention whatever of the person or even of the office of the Reich Protector during the entire proceedings; it is an internal affair of the Police involving the Higher SS and Police Leader Frank.

Because of the importance of this point, I would like to refer explicitly to the statements, made by the witnesses Von Burgsdorff and Völckers, both of whom were, on the basis of their official position, thoroughly conversant with this question during the entire time the defendant was in office. Burgsdorff testified that the Police

was under Frank, who received his orders directly from Himmler. Völckers said that the defendant had no influence on Frank's activities, and thereby on the Police. In practice, from the very start, the Police and, therefore, also State Secretary Frank took their measures independently of the defendant. This was legally confirmed later through the ordinance of 1 September 1939. All witnesses, also in their written testimonies, testify that the relations between the defendant and Frank had been as bad as can be imagined.

It is entirely impossible in such a state of affairs that the Chief of the SD and the Security Police should have been active as political adviser to the defendant. The defendant cannot at all remember a decree of May 1939 about the appointment of this man, to which reference is made in the document by the Chief of Security Police—Document Number USSR-487. In any case, according to his definite statement, he never performed any duties. The document, USSR-487, therefore, does not appear to be conclusive as evidence. The copy handed to me by the Prosecution is dated 21 July 1943. That alone proves that the appointment of the SD leader, if it occurred at all, did not take place during the defendant's entire time in office. Aside from the date, however, the "reference" of the latter shows that this appointment does not at all concern a political adviser to the Reich Protector himself, but to the State Secretary for Security Matters—that is, Frank. The address "Der Herr Reichsprotektor" is not to be understood to mean the person, but rather the office. In German official circles it was customary to speak of the "Herr" Reichsminister, *et cetera,* even though he was not meant personally, but some department of his office. It is entirely credible and probable that the SD leader was appointed political adviser to the State Secretary, who at the same time was State Secretary to the office of the defendant and independent State Secretary for Security Matters.

Precisely from the so-called "warning," given at the end of August 1939, with which the Prosecution charged my client, it can be seen how he himself felt about the ways and means of easing the minds of the population and of preventing acts of violence and insubordination on their part. According to his sworn testimony, the defendant thereby intended to discourage the population from committing acts of violence and especially to prevent acts of sabotage—which were to be expected in this time of high political tension before the war—thus preventing harsh police or legal measures which would only serve to embitter the population even more. It is doubtless more humane to issue such a warning, and thereby prevent such crimes, rather than allow crimes to be committed without previous warning and afterward mete out severe punishment.

The fact that acts of sabotage, if it was impossible to prevent them, had to be severely punished in those times would certainly have been acknowledged also in any other country and taken for granted. As the defendant testified, the warning fulfilled its purpose. No special punishments were threatened or fixed; it contained no special threats of punishment whatever, but referred, as the wording proves, to criminal law already in force.

The sentence, that the responsibility for all acts of sabotage affected not only the culprit but the entire Czech population, is, of course, concerned only with the moral responsibility and not the penal one, as was also confirmed by the defendant. It means that in the case of repeated serious acts of sabotage, general measures would be taken in the respective territories, as for example, earlier curfew, ban on going out, or general stoppage of traffic or electric current, under which the entire population would have to suffer. A responsibility in the penal sense would have had to be formulated much more concretely. It was expressly mentioned at the beginning of the proclamation that anyone who committed the cited crimes thereby proved himself to be an enemy of the Reich and had to be punished accordingly. This sentence especially shows that the penal treatment of such sabotage acts was to be applied individually. At that time, nobody in Prague, not even the Chief of Police, would have thought of the idea of decreeing collective punishments or even, as the Prosecution asserted without any evidence whatever, of introducing the hostage system. In this connection, I also wish to refer to the statement made by the witness Von Holleben, Document Book 5, Document Neurath-158, in which he states, "Neurath, therefore, always refused to make a person responsible for acts committed by somebody else."

From all that has been said previously, we see that the Defendant Von Neurath cannot be made responsible for the arrests made at the time of the occupation of the Czech territory, nor for the arrests made at the outbreak of the war of, as the Prosecution assert, 8,000 prominent Czechs sent to concentration camps or executed as hostages. These arrests, according to the defendant's testimony, with which Frank's testimony agrees, were made on direct order from Berlin without knowledge of the defendant nor even of Frank himself. Bienert's contradictory testimony presented by the Prosecution is factually incorrect, and is based on completely illogical and false deductions. His deduction that this entire action was under the defendant's direction because his order for Bienert's release had been issued only 4 hours after his arrest is without any logic and is objectively wrong.

Finally, on the basis of the evidence, it is irrefutable that the defendant is also not responsible for the order to shoot 9 students and to arrest approximately 1,200 students during the night from 16 to 17 November 1939; that these measures, rightly called terror actions, had been ordered during his absence from Prague, and without his knowledge, by Hitler personally and had been carried out on Hitler's direct order by Frank; and that also the proclamation of 17 November 1939 announcing it was neither issued nor signed by him, that on the contrary his name under it had been misused. It is proved by the testimony of the defendant himself and by that of the witness Dr. Völckers, who accompanied the defendant on his trip to Berlin on 16 November 1939, the day after the student riots, and had returned from Berlin to Prague with him on the very afternoon of 17 November; furthermore by the written testimony of Herr Von Holleben, and finally by the affidavit of the defendant's secretary, Fräulein Friedrich—Document Book 5, Document Neurath-159—and of the Baroness Ritter, that the defendant, during the night of 16 to 17 November, when the shootings and arrests took place, was not in Prague but in Berlin, and the publication of these incidents was already posted on the house walls of Prague when the defendant returned to that city. The defendant is not in the least responsible for these atrocities. The order for them, as well as the simultaneous order for the closing of the universities, had, on the contrary, been given directly to Frank by Hitler in Berlin, and this, as the witness Völckers expressly affirms, in the absence and without the knowledge of the defendant.

The value, in consideration of this, which may be ascribed to Dr. Havelka's testimony, presented by the Prosecution, is self-evident. The credibility of this witness Havelka, as well as of all the other Czech testimony submitted by the Prosecution, must in general be examined with the very greatest caution. It is subject, from the first, to two very serious objections. First, all these witnesses are members of the former autonomous Czech Government—that is, the so-called collaborationists, who are in jail today for this reason and are awaiting their sentence. It is humanly quite understandable if today they see in a different light the conditions then prevailing, judge them differently from what they really were, and involuntarily confuse the terrible things which happened after Herr Von Neurath had left Prague with the events while he was there. This results from a haziness of their memory. We must not overlook the fact that, as is quite natural, they hope by incriminating Herr Von Neurath to clear themselves.

Added to this is the fact, which is more important still, that they had no knowledge whatsoever and could not have had any of the internal, factual, and legal conditions and competences

within the office of the Reich Protector, and that they therefore are not at all able to judge to what extent the defendant himself was really the man who issued the individual decrees and orders or brought them about. One example shows this very clearly. In the witness Kalfus' testimony, it is alleged that the defendant was responsible for the customs union between the Protectorate and the German Reich. In this respect, I wish to refer only to the fact that already, in Hitler's decree of 16 March 1939, it had been expressly announced that the Protectorate belonged to the customs district of the Reich. The witness Bienert further asserts that it was Herr Von Neurath who subordinated to the Germans the political administration of Bohemia and Moravia, which means state as well as communal administration. This is, however, also objectively wrong. As I have already proved, this subordination was ordered by the decree of 1 September 1939, which was not issued by the defendant but by the Ministerial Council for the Defense of the Reich. These examples should suffice to show how little credibility can be attached to all these testimonies, and how little the witnesses were informed about the actual conditions of organization and authority within the office of the Reich Protector. The often repeated assertion of the witnesses that the arrests and many other measures of force by the Gestapo against the Czech population were done on the order or instruction of the defendant personally is, for example, either a deliberate falsehood or proof of their ignorance of even the published official decrees announced in the Czech official gazette. For the Gestapo, as I have already proved, was not at all under the jurisdiction of the defendant. The conclusions to be drawn from this, as to the credibility of all the witnesses, are self-evident. It is obvious that in contrast thereto the sworn testimony of the defendant and of the witnesses presented by me, together with the decrees submitted pertaining thereto, deserve far more credibility.

The allegation of the Czech indictment, and of the testimony on which it is based, that Herr Von Neurath, in the middle of November 1939, ordered the closing of the universities has thus been disproved as objectively wrong. In fact, the closing of the universities took place on the express order of Hitler. As the evidence has shown beyond any doubt, the defendant immediately protested to Hitler and succeeded in obtaining his promise to reopen the universities after one year instead of only after three years. The defendant cannot be blamed for the fact that Hitler did not keep his promise. His efforts for the revocation of the closing of the universities prove, however, how much he was interested in maintaining the educational standard and the intellectual classes of the Czech nation.

The defendant did whatever he could for the Czech nation as a whole and for the individual. This applies especially to the harmful activity of the Police and the Gestapo, as far as he received information about it. According to his own testimony, which is confirmed by that of the witness Dr. Völckers, immediately after the arrest of the students in the middle of November 1939, he used all the influence at his command for their release, and as we have heard here, not only out of his own mouth but also from Dr. Völckers, he succeeded in obtaining the release of almost all the students by the time he left Prague on 27 September 1941. And he worked in the same way continuously for the release of about 8,000 prominent Czechs who had been arrested at the beginning of the war. As proved by his own testimony under oath, these arrests were ordered by Berlin directly and not by the defendant, as the Czech witnesses Bienert, Krejci, and Havelka untruthfully maintain, nor even by Frank or by any other Higher SS or Police Leader in the Protectorate. Moreover, it is also due to the defendant's personal intervention that in 1941 the order Hitler issued at Frank's and Himmler's instigation for the removal and arrest of the then Czech Prime Minister General Elias was rescinded. Only after he had left was Elias arrested by Heydrich and later condemned to death by the People's Court.

Definitely wrong is the allegation of the Czech witness Bienert that the defendant had arranged for the transportation of Czech workers into the Reich—that is, that he deported Czech workers by force into Germany. It is, on the contrary, true that, during the whole term of office of the defendant, not a single Czech worker was deported by force to Germany. Until 27 September 1941, no compulsory deportation of labor had yet taken place in any territory occupied by Germany. That happened only later. But many Czech workers voluntarily and gladly went to the Reich and accepted jobs there because of the fixed exchange rate of the Reichsmark and the higher wages; they earned much more there than in Prague and could send a great part of their earnings to their relatives in the Protectorate.

If the Czech Prosecution want further to charge the defendant with the sending by the Gestapo of arrested persons to concentration camps, and with the ill-treatment of those individuals there, it must be stated decidedly that until 27 September 1941, the end of the official activity of the defendant in the Protectorate, not a single concentration camp existed in the Protectorate. They were all established only after his departure, under his successor. The decree, too, concerning protective and preventive custody, with which the Czech Prosecution apparently wish to charge him also,

was issued only after his departure, on 9 March 1942 as shown by the copy annexed to the Czech report, Document USSR-60.

Lastly, with regard to the charges of the Indictment concerning the alleged measures taken by the defendant against the Jews, in this point too the representation of the Indictment does not correspond to the facts, and is shown to be erroneous on closer examination of the documents submitted by the Prosecution themselves. Of the total of 21 decrees contained in the British Document Book Number 12b, only 4 were signed by the defendant himself; 6 were issued directly by the Reich Ministry, 10 by State Secretary Frank,—or his direct subordinate Dr. Von Burgsdorff—and one by the Czech State President Hacha.

The first decree signed by Herr Von Neurath himself on 21 June 1939, which contained nothing but the introduction of regulations valid for the entire German Reich concerning treatment of Jewish property in the Protectorate—which since 16 March 1939 was also a part of the German Reich—had been laid down for the defendant by Berlin when he assumed office. The fact, however, that it was published on 21 June 1939, 3 months later, proves the correctness of his statement, that he wanted to give the Jews time to prepare themselves for the introduction of the Jewish legislation as in force throughout the Reich. Its postponement to that day was done expressly in the interest of the Jews.

The second decree issued by the defendant himself on 16 September 1940 merely prescribed an obligation to declare securities—that is, mortgages, which were Jewish property—and corresponded to the various decrees of the same or similar kind issued in the German Reich, too, and were applicable to all German nationals.

The third decree, issued and signed by himself, of 5 March 1940, as well as the fourth of 14 September 1940, as quite clearly shown by their contents, aimed at making possible and facilitating Jewish emigration, which the course of events in the Reich had made inevitable. Therefore both decrees had been issued in the very interests of the Jews themselves, and prove that the defendant had no anti-Semitic views.

All the documents submitted by me which refer to this matter, among others the newspaper report concerning the boycott of the Jews in the spring of 1933—Document Book 1, Document Neurath-9—and the submitted depositions of witnesses, show that he did not approve of the measures taken against the Jews, particularly measures of violence, but opposed them. As shown especially by the deposition of the witness Dr. Koepke, such measures would have been in contradiction with his Christian and humane attitude and ideology. It is confirmed that until his departure from Prague not a single synagogue had been closed, and that no

religious restrictions against the Jews had been decreed. No particular proof is needed to show that the defendant cannot be made responsible for the six ordinances issued by the Reich Ministry of the Interior. But neither does he bear any responsibility for the decrees signed by Frank and Herr Von Burgsdorff, in view of the independent position of State Secretary Frank and the competence of the Police concerning all Jewish matters, which I have described. In opposition to the assertion of the Indictment, it must be particularly emphasized that, according to his own sworn deposition, no persecution of the Jews occurred during his entire tenure of office.

His afore-mentioned humane and Christian attitude and ideology make the assertions in the Czech report of 4 September 1945 (Document 998-PS), concerning the alleged hostility of the defendant to the Church, appear just as unlikely. It is true that the Czech indictment of 14 November 1945 (Document USSR-60) does not make this report an object of an accusation; but, nevertheless, I should like to speak about it briefly.

It is proved by evidence that the relations between Herr Von Neurath and the Archbishop of Prague were very good, even friendly, and that the latter explicitly thanked the defendant for his support of the churches. This would certainly not have been the case if he had been opposed to the Church or if he had suppressed the churches, their organizations and clergy, or persecuted them in any other way. It is certainly not an extraordinary occurrence that there may have been differences in official matters, as obviously was the case according to the letter of the Archbishop submitted by the Prosecution; State and Church always have had differences with one another, at all times and in all countries. But this cannot under any circumstances be construed as implying, on the defendant's side, a policy opposing the Church. It may be that members of the clergy were arrested; but, in the first place, such arrests were ordered not by the defendant, but by the Police, which was not under his control, and secondly—if the defendant knew of them at all—not on account of any church activity, but because of political intrigue. Neither is it clear from the mentioned Czech report whether the alleged actions against the Church, its organizations and clergy, actually took place during the defendant's tenure of office. The evidence has shown that he did not decree any antiecclesiastical or antireligious measures. Pilgrimages to the Czech religious shrines, for example, were expressly permitted by him.

At this point I would also like to emphasize that the defendant was not guilty of injuring Czech national feeling in any way. Contrary to the assertion of the Prosecution, he did not destroy

or close any Masaryk houses as the Prosecution would like to charge against him. As far as the closing of any Masaryk houses is concerned, the SS and the Police, which were not under his jurisdiction, are exclusively responsible. His attitude toward the Czech national feeling is best illustrated by the fact that he especially permitted the customary deposition of wreaths at the Masaryk monuments.

Nor did the defendant take measures hostile to culture, in spite of all efforts made in that direction by radical elements. Czech theater life was not touched and remained completely free, as well as Czech literature, which was not suppressed or encroached upon in any way, with the exception, of course, that anything of an anti-German or inciting character was prohibited. Also the press—which, incidentally, was not controlled or censured by him, but by the Reich Ministry for Propaganda—was not submitted to any other limitations than the German press, since the defendant's efforts altogether were directed toward conserving and encouraging Czech cultural life in its characteristic quality and independence.

I believe it is not necessary for me to go still further into details about that subject, and that I can confine myself to referring to the defendant's own statements and the statements of the German witnesses about this. The testimony of these witnesses shows clearly what difficulties and opposition on the part of certain radical circles and authorities, not least on the part of his own State Secretary Frank, he had to contend with in his general policy toward the Czech people.

If one wants to summarize his official activities, one may say that his entire life in Prague was one long struggle: A struggle against the forces inspired and led by Himmler; a struggle which was all the more difficult because he did not actually possess full powers in the Protectorate, and because the offices and authorities which were the most important and influential in the field of home politics—the entire Police and the Gestapo—were not subordinate to him. Nevertheless, he did not abandon this struggle, and never grew tired of protesting to Hitler again and again and demanding redress—in many cases successfully; in others, not. He fought up to the very end; he did not allow failures to discourage him, and he remained faithful to his policy of reconciliation and compromise, of pacification and conservation of the Czech people and their national characteristics. And when here again he was forced to recognize, in the autumn of 1941, that to continue his fight was hopeless—that Himmler's influence on Hitler was greater than his own, and that Hitler had now decided to change over to a policy of force and terror, and to send Heydrich, who was known as a bloodhound, to Prague for this purpose, he immediately, just as in

the winter of 1937-38 as Foreign Minister, took the consequences, resigned his post, left Prague, and retired to private life for good.

THE PRESIDENT: Perhaps this would be a convenient time to recess.

[A recess was taken.]

THE PRESIDENT: The Tribunal will sit in open session on Saturday morning until 1 o'clock.

DR. VON LÜDINGHAUSEN: What impression this resignation created on the Czech people, even the circles most hostile to Germany, and what interpretation was put on it appears, with a clarity that can hardly be surpassed, from the Czech report—Document USSR-60—which was truly not dictated by pro-German sentiments or love for my client, and which characterized this departure of my client as a "gehöriger Schlag" in the German text—"a heavy blow" in the English text—thereby actually disavowing its own accusations against Herr Von Neurath. And indeed I think I have proved that, while discharging the duties of his office, the defendant did not personally become guilty of a single crime against humanity punishable under the Charter of this Tribunal; and only such crime could, after all, be considered here.

And now the basic question of this Trial arises: Did the defendant become guilty—that is, guilty in a manner punishable under the Charter—of supporting or aiding Hitler and his accomplices in the commission of their crimes by accepting the office of Reich Protector and by keeping it, in spite of the war launched by Hitler a few months after his assumption of this office, and in spite of the events in November 1939, and several other occurrences? The Prosecution answer this question in the affirmative. But can an objective impartial judgment of matters really lead to this affirmative answer?

One thing should be absolutely certain after what we have heard here from the defendant himself, from the witnesses whom I questioned on the subject, and from the affidavits which I presented. Herr Von Neurath was not moved by external or material reasons to enter and remain in Hitler's Government as Foreign Minister. Such reasons were similarly not responsible for his acceptance of the post of Reich Protector. This is already proved by the fact that he declined the donation which Hitler intended to present to him on his seventieth birthday in 1943, but finding this not practicable, he had this donation in his bank, as I have proved on the basis of the letter from his bank—Document Book 5, Documents Neurath-160 and 161—and did not touch one penny of it. And how little the supposedly illustrious position of the Reich Protector attracted or even suited him is clearly evident from his letter of 14 October 1939

to the witness Dr. Koepke—Document Book 5, Document Neurath-150, in which he compares it to a prison.

In both cases, as has been proved not only by the defendant's own statements but also by the statements of all the witnesses and documents which I have introduced, the motive or the reason for the acceptance of and perseverance in his position was not, by any means, his approval of the ideologies of the Nazi regime with all its methods and his wish to support them, but, on the contrary, his high ethical and moral convictions which sprang from his deep sense of responsibility, as a human being and as a statesman, toward his people. Since he was not in the position and had not the power to remove Hitler and the Nazi regime, he considered it his duty, at least in a limited way within the compass and limits of his power and in the sphere entrusted to his direction, to fight the Nazi tendencies he despised and to prevent their materialization as far as his own strength permitted. Can one, I ask, really reproach Herr Von Neurath for doing this; can one condemn him, because the task he had assumed with a sense of moral duty and a consciousness of responsibility was beyond his strength, and he failed in it?

May I ask you, Your Honors, to free yourselves of all juridical and political prejudices, of the retrospective view of things with its unreliable deductions, and to penetrate into the soul of this man—his world of thoughts and his conception of life.

Brought up in a home inspired by Christian, humane, and respectable ideas, and also by a sense of responsibility toward the German people, he had grown up and reached the age of 60 in a civil service career under the various governments—first under the imperial government, then under the changing governments of the Republic. Without paying attention to their political trends, without asking whether they were conservative, democratic, or social democratic, he had served them, and had carried out the tasks assigned to him in his sphere of work. As a diplomat—as an official of the Reich's Foreign Service—the field of internal politics was completely remote to him. He considered it his sole duty to serve his people as such, regardless of the government in office and its inner political attitude.

And thus, much against his personal wishes, upon Hindenburg's call in the hour of distress, he took over the Foreign Ministry and thereby entered the Government of the Reich and remained in it also after Hitler was appointed, not as the representative of any particular political party, but as Hindenburg's special confidant in the field of foreign politics. He was the guarantor of the Reich's peace policy, the *rocher de bronze* in this field. His entire education, his sense of responsibility toward his people, would not permit him to do anything else than remain at his post after he had been drawn into the whirl and dynamics of the National Socialist movement, and

then necessarily saw how this Movement was turning in a direction and making use of means which he, too, could only condemn.

But just as their sense of responsibility and duty to their own people had driven other respectable and patriotic Germans to the decision to remove Hitler and the Nazi regime by force, so it was with the defendant, whose sense of responsibility and duty, not only toward himself but also toward his people, forced him to set aside his personal abhorrence of the immorality of this regime and, by remaining in office and continuing to conduct its affairs according to his own principles, to fight actively against this immorality, and thus at least keep it away from the department under his control and protect his German people from this immorality of the Nazi regime and its consequences—namely, war—as long as he was able to do this.

And then, a year and a half after his resignation, when the call came to him again to accept a position—this time as Reich Protector of Bohemia and Moravia—and Hitler declared to him that he had expressly selected him for this position because he considered him the only suitable person to carry out his intended policy of real reconciliation between the Czech people and the new conditions and the German people, the very same sense of duty and responsibility forced him to follow this call. For was it not natural for him to deduce from the fact that Hitler—in spite of knowing his opposition to the National Socialist regime, its policies and methods—desired to entrust him with this task, that Hitler really and honestly meant to effect a reconciliation and appeasement with the Czech people? Here he was confronted with a task, the achievement of which would not only be of the highest benefit to his own but also a foreign people, a task which not only served for the reconciliation of two nations but also for the ideal of humanity and Christian brotherly love, as well as for the protection of the Czech people from the pernicious methods of the Nazi regime.

And now I ask: Is it not at least just as moral and ethical to pledge one's self and one's person for such a goal, to work actively—if only to a limited extent—against this regime which one has recognized and repudiated as immoral and corrupt through an apparent collaboration, if only outwardly appearing as such, to prevent the use of the methods of this system and thereby save innocent people from misery and death, as it is to withdraw grumbling out of personal aversion and look on inactively while this regime rages against humanity without restraint?

Not everyone has an aggressive character, is a revolutionary who can use violence against the hated system and its leaders. And do not forget, Your Honors, that at that time under Hitler's autocratic regime there were only these two possibilities to work really

actively and positively against the Nazi regime and its terror. Under this regime there were not the thousand and one possibilities of fighting a hated and accursed government, as is the case in free democratic countries with free and independently elected parliaments. In Hitler Germany any form of active or even public opposition only meant a completely useless sacrifice. And therefore I beg you, Your Honors, in judging these matters and in answering my question, to free yourselves from the democratic conditions and circumstances which you take so much for granted, but which are completely incomparable with the conditions in Germany under Hitler at that time—the lack of consideration of which fact has already caused much disaster up to very recent times.

And did not the Defendant Von Neurath save the freedom and lives of thousands of people, whose freedom and lives would have been irretrievably lost without him, by his very acceptance of the office of the Reich Protector, and by remaining in it despite the fact that he had to realize that through no fault of his, he could not fulfill the task connected with this office, that he did not have at his disposal the necessary means for its accomplishment, but yet, in spite of all this, continuing his fight against the terror of the Nazi regime? Is this not worth a thousand times more; is it not much more moral and ethical than if he had retired immediately, full of abhorrence and moral indignation?

I do not hesitate to answer this question, just as my first question, in the affirmative, and to express my conviction that no one can condemn me for this. Or shall a Sophoclean tragedy be unfolded before us here in the fate of the defendant, in which a man becomes guilty, due to no fault of his own, because he obeyed his conscience and his sense of responsibility?

Your Honors, I believe I have shown and proved by my preceding statements that not a single one of the actions with which the Prosecution have accused my client is criminal within the meaning of the Charter, and that not one of these actions by the defendant was aimed intentionally at committing a crime within the meaning of the Charter of this High Tribunal, so that no criminal action exists, either objectively or subjectively. But I believe I have shown also, over and above this, that all my client's actions as a whole had just the opposite purpose of what the Prosecution claim they did—namely, not the perpetration, but the prevention of just such actions as the Charter defines as punishable crimes, whether crimes of planning, preparation, or the waging of aggressive wars, be they crimes of war or crimes against humanity.

But there still remains one thing for me to do: to draw the conclusion from all that as to how impossible, indeed, how paradoxical

it would be to apply the principles of the conspiracy with regard to my client—his participation in it from the very outset, which sanctions or will sanction the preparatory or any other actions in this respect by the remaining members for attaining this criminal aim.

But when, as the Prosecution are deliberately doing, one regards approval of the criminal objective, and all preparatory actions for its achievement by each one of the other members in their official capacity, as proved in international law, merely by the fact of the assumption of or remaining in an office in spite of knowing the criminal aims, and from this fact alone deduces a criminal coresponsibility on the part of each individual, the consequence inexorably follows with compelling logic that the application of the principle of coresponsibility due to the assumption of an office or simply remaining in it, without consideration of whatever decent and ethical reasons may have caused one to do so, calls for the punishment of one who not only disapproves of these criminal intentions, plans, and actions of the others but even opposed them actively, and who only accepted his appointment or remained in his position for this reason, as was the case with the Defendant Von Neurath.

In a court which not only represents justice—the legal and ethical conscience of all civilized nations on earth—but is also going to show the way to universal peace to the coming generations, I need not prove to you, Your Honors, that such a result is contrary to not only every natural but also to every legal sense of justice and ideas of justice; that it is contrary to that which this High Tribunal have to strive for and are striving for; that it is contrary to every moral and ethical postulate. This task can only be fulfilled if you show mankind once more that any generalization, and leveling, any treatment, and thus also any judgment and conviction of people and of their activities only on the basis of corporative—I could say, gregarious—concepts, and not on the personality, the will, and the designs of the individual, is evil. Such treatment denies the holiness of the individual and in the long run leads inevitably to the adoration of mere force. But this adoration of force, this belief in force, was precisely the underlying cause of the terrible events which once more have been unfolded before us here.

You can only then do justice to and fulfill your double task—to punish where chastisement should be applied according to divine and human law, and, at the same time, to show mankind the way to international peace—if by your sentence you take away from mankind the belief in force and give back, instead of this belief, to all nations on earth, and not least of all to the German nation, the belief in and the respect for the holiness of the individual, whom the Lord once created in his image.

Fully convinced of the truth of this conception, I now confidently place the fate of my client, the Defendant Baron von Neurath, in your hands!

THE PRESIDENT: I now call on Dr. Fritz on behalf of the Defendant Fritzsche.

DR. HEINZ FRITZ (Counsel for Defendant Fritzsche): Mr. President, the result of the evidence in the case of Fritzsche is a relatively clear one.

Although I am one of the last to plead, a close examination of legal problems cannot be avoided. Above all, these problems arise from the fact that Fritzsche was characterized by the Prosecution, in a particularly striking manner, as an accomplice. However, at first I must examine what position Fritzsche had in the Propaganda Ministry, and what part he played in the German propaganda in general. It is these facts which ought to be conclusive in determining what part he supposedly played in the alleged conspiracy.

At the beginning of the Trial, Mr. Albrecht submitted as evidence the organizational structure of the Government of the Third Reich, as of March 1945, in the form of a diagram. Mr. Albrecht admitted himself that Fritzsche's name did not appear in it in the position of one of the main leaders of the Propaganda Ministry. It is true, he added, that his importance had been greater than one would be led to think from his position as shown on this diagram. He closed his statement by saying that evidence to this effect would be submitted to the Tribunal (Session of 21 November 1945). Has this been done, and was the hearing of evidence really able to prove that Fritzsche had greater importance?

At the session of 28 February 1946, Sir David Maxwell-Fyfe introduced as evidence a "compilation of the elements of guilt" which, in a particularly impressive manner, demonstrates in how far the individual defendants are connected with the facts of which they are supposed to be guilty in the opinion of the Prosecution. The classification of the individual defendants follows from the table which is attached to this compilation as Appendix A. The Tribunal will have noticed that the Defendant Fritzsche is the only one not to appear on this table at all. This follows from the fact that he does not belong to any of the organizations which are to be declared criminal here.

A look at the organizational plan of the Propaganda Ministry, which was submitted in Brief E by the Prosecution (Session of 23 January 1946), also shows clearly that Fritzsche, even in his last position as Ministerial Director and Chief of the Broadcasting Division, was only one of 12 officials of the same rank. Such a position in itself excludes *a priori* the assumption that he could have

determined the principles of policy, the principles of news presentation, and the principles of what may or may not become known to Germany and the world. It is true, Captain Sprecher pointed out—evidently in order to increase Fritzsche's importance—that the Chief of the German Press Division held a unique position, but also did not pass over the fact in silence that he had predecessors and successors in this allegedly unique office.

When, in November 1942, Fritzsche was appointed Chief of the Broadcasting Division by Goebbels, he did not obtain a higher position in the civil service hierarchy as a result. His activity was purely administrative. It concerned technical organizational questions. In his affidavit of 7 January 1946 my client describes the administrative work connected with it. He also lists his numerous predecessors. Did it occur to anybody to indict these other persons also as major war criminals, or to call them supreme commanders of a propaganda instrument? Since this is not the case, the conclusion must probably be drawn that it was not Fritzsche's official position which formed the basis for the Indictment.

Justice Jackson, too, pointed out (Session of 28 February 1946) that within the framework of the organizations under indictment here not all administrative civil service employees and division chiefs or state officials have been included as a whole; only the Reich Cabinet was named. Therefore, it can also not be imputed to Fritzsche—as is allegedly possible in the case of the members of the organizations—that from his position alone, and from the close connection of the individual members of the organizations they must necessarily have known, and fully and clearly understood the plans of the alleged conspiracy by virtue of their membership alone.

During Fritzsche's cross-examination, an attempt was also made by the Russian Prosecution to magnify Fritzsche's position. They introduced three protocols as evidence—namely, the interrogatories of the witnesses Schörner (Document USSR-472), Voss (USSR-471), and Stahel (USSR-473). But these documents cannot be considered as evidence. These depositions were used only to confront the defendant with isolated passages from them. Because of this limitation, I was able to dispense with the cross-examination of the three persons who signed these protocols. But Fritzsche did not fail to express his opinion on these passages, which were held up to him while he was being questioned on the witness stand.

In this connection I have to point to only one more thing: Not one of these three persons has even claimed to have had any insight into the internal organization of the Propaganda Ministry. None of the three depositions contains any definite statement of Fritzsche. On the contrary, these depositions contain mere judgments, judgments which we do not want to have from witnesses, especially

not in a case where they cannot furnish any kind of substantial facts. For this reason alone, any value as evidence must be denied them. But aside from that aspect, they represent completely wrong judgments. They can by no means be derived from Fritzsche's own statements which were submitted in this Trial by the Prosecution—namely from his radio addresses. If evidence against the Defendant Fritzsche bearing out these judgments could have been submitted, then, in view of the fact that the Prosecution could have obtained all of his radio addresses it would have been more to the point to submit here these statements made by him which would have enabled the Tribunal to form their own judgment. The transcripts of the interrogations contain only the summarizing statement that Fritzsche was Goebbels' "deputy." I confronted the witness Von Schirrmeister with this assertion, and he termed it as pure nonsense. Fritzsche had to say the same on the witness stand. There can be no doubt that the concurring testimony of both witnesses is correct. Finally, there are still hundreds of others who formerly worked in this Ministry who could verify the truthfulness of these statements from their own knowledge. I can state, therefore, that the attempt at magnifying Fritzsche's positions, contrary to the facts given in the organizational chart of the Propaganda Ministry as submitted by Mr. Albrecht, is a complete failure.

Beyond that, the hearing of evidence had shown that Fritzsche was not the creator of the great control apparatus for the German press, as was furthermore claimed by the Prosecution (Session of 23 January 1946). On the contrary, it was Dr. Goebbels and other associates of his. Fritzsche could not have been the creator because of the time element alone. In the first place, for years he had merely been an employee. Then he became a consultant—Referent—and it was only since the winter of 1938-39 that he was one of the 12 division chiefs of the Ministry. When he became Chief of the German Press Division, the policy of the press was determined by Reich Press Chief Dr. Dietrich. As has been said already, he became Chief of the Broadcasting Division only in November 1942 and did not create anything fundamentally new there. Neither Goebbels nor Dietrich ever allowed the control of the German press and radio to be taken out of his hands. With regard to the details I wish to refer to the testimony of the witness Von Schirrmeister.

The fact that Fritzsche could have been neither the creator of the Press Division nor a leader of the German propaganda, as far as it emanated officially from the Ministry, is also shown by the other numerous statements both by Fritzsche, when questioned about it on the witness stand, and by the witness Von Schirrmeister. During his entire activity, Fritzsche actually never possessed any authority to give orders in these fields and could not have had it, owing to his

rank in civil service, which would justify his being called the creator or leader of the press and radio in the Third Reich. On the contrary, between Dr. Goebbels, Dr. Dietrich, and himself, there were quite a number of other higher intermediary offices. In this connection I can also refer to what Lieutenant Meltzer stated in general about the importance of a state secretary in the Reich Propaganda Ministry and that of the Reich Press Chief, when he referred to an affidavit by Amann of 19 December 1945. He pointed out that the holders of these positions exercised complete control over the news service in Germany (Session of 11 January 1946; Document 3501-PS). Fritzsche never held either one of those positions. Incidentally, the Propaganda Ministry did not have only one, but three state secretaries. Besides, Dr. Goebbels had surrounded himself with a ministerial staff (Ministeramt). I believe it is appropriate to point here to this low rank because the Prosecution thought, as they did in other cases—for instance, in the case of the Defendant Göring—that they could conclude a special responsibility from a high rank; that is, from a defendant's outward position alone. Therefore, one can by no means start from the assumption that Fritzsche exerted any decisive influence upon the conduct of propaganda in general and upon the policies which were pursued by the press and radio.

The tasks which Fritzsche accomplished on the technical side of the news system involved him only as a journalist and expert. They had nothing to do with the contents of the propaganda which was pursued by the state leadership. In this respect, too, he was only a person who carried out directives. It is true that he set up the technical organization of the journalist news agencies; he thereby modernized and perfected them. It is also true that this news system played a very important part later in the war. In that respect, Fritzsche's work extended only over the period from 1933 to 1938. But it is a fact that in those years he did not have the least influence upon the contents and political trend of the news, particularly in view of the fact that he was a mere employee at that time.

I make these references to Fritzsche's official position within the Propaganda Ministry also for another reason. In admitting what he did and said, and wanting to assume full responsibility for it—Fritzsche had an opportunity to explain in detail the cause for and contents of all the excerpts from his radio addresses submitted to him—he cannot, on the other hand, answer for theses which were championed by other offices of the state propaganda apparatus and also within his own Ministry. Still less can he answer for the unorganized propaganda of the Party. Fritzsche described the various controlled and uncontrolled kinds of propaganda of the Third Reich and pointed out their effects. May I remind the High Tribunal that the witness Von Schirrmeister testified to the effect

that even Goebbels could not do anything with the "Party doctrines" and the "myth" in the field of propaganda. According to the witness, Goebbels did not regard them as things with which to lure the masses. When the Defendant Speer mentioned the secret agitation about the miracle weapons, he was able to point to other sources of unorganized Party propaganda. Fritzsche does not bear any responsibility for all that. His official position was not influential enough to be able to fight effectively against all faulty conditions and abuses. Therefore, his repeated attempts to have *Der Stürmer* banned—he considered this paper an excellent means of anti-German propaganda—remained without success. The Party propaganda with all its practical consequences played a much more important part than that which Fritzsche with his comparatively very limited functions could ever have played. I recall the fact that, according to Fritzsche's testimony, even Dr. Goebbels was afraid of Bormann. This was explained by the portentous sentence according to which it was not the State which had to give orders to the Party, but inversely the Party to the State.

The hearing of evidence—especially the examination of the witness Von Schirrmeister—has thus shown, without any doubt, that the decisive directives for the propaganda of the Third Reich came from other agencies. Goebbels, from whom Fritzsche kept his distance personally, did not allow any of the subordinate officials in his Ministry to interfere with his plans. It has become evident that he carried out his plans with the authority of his position, with the adroitness of his arguments—which the world knows—and, if necessary, by means of fraud. The leadership of the German press policy—let us consider only this limited sphere—was and remained in the hands of Dr. Goebbels and Dr. Dietrich. The same thing happened with the radio, as the witness Von Schirrmeister has stated, when Fritzsche took over its direction in November 1942. Dr. Goebbels, one of the oldest and closest of Hitler's collaborators, and Dr. Dietrich, Hitler's permanent escort—during the war he was present almost uninterruptedly in his headquarters—never allowed the leadership of the press and radio to be taken out of their hands, especially by a man who, like Fritzsche, had no connections of any kind with Hitler and had not even had a single conference with him. Ultimately, Hitler's will was decisive here, too.

We have furthermore heard the influence—it is of no importance here whether it was due to Hitler, Goebbels, or Dietrich—which other governmental agencies successfully exercised on the press and radio. Here I will mention the Foreign Office, the High Command of the Armed Forces, and other ministries, the heads of which were much more closely connected with the three afore-mentioned personages than, for instance, Fritzsche.

In order to avoid a misunderstanding, I would like to point out that the assertion of the Indictment that Fritzsche was in some way closely connected with the Party propaganda apparatus, for instance, with the so-called Reich Press Agency of the NSDAP, or the radio department of the Party, has been positively withdrawn by the Prosecution in the course of the Trial. With this, I think that I have sufficiently established the limits of the defendant's responsibility. This limitation shows the inaccuracy of the widely spread opinion that Fritzsche occupied a very important and influential position in the "gigantic propaganda apparatus" of the Third Reich. This limitation not only takes into account the legal but also the moral facts, which have been clearly indicated by the hearing of evidence.

Thus to a certain extent I have already taken a stand against the charge that Fritzsche was a member of the alleged conspiracy. The Prosecution have repeatedly tried to incorporate Fritzsche's work, at its different stages, in the alleged group of conspirators, and have drawn from it conclusions which go so far as to say that Fritzsche was therefore also responsible for War Crimes, for Crimes against Humanity, and even for Crimes against Peace (Session of 23 January 1946). Even in the arguments of the Indictment, these attempts seemed to have little relevant justification.

It is hardly any improper criticism if I declare here that it caused the Prosecution a certain embarrassment to display Fritzsche's subordinate position as an official as so important and full of meaning. Today, now that the hearing of evidence is complete, it seems to me that the attempts to include Fritzsche in the circle of conspirators have failed. Fritzsche cannot be found at any of the sessions at which Hitler discussed any plans or actions with the closer or wider circle of his collaborators. And apart from this, he never actually took part either in any discussions which might have been of a nature to plunge the world into the blood bath of wars of aggression. He was neither an "old Party fighter," nor was he decorated later on with the Golden Party Badge. He did not belong, as I had to emphasize especially, to any of the organizations which are here alleged to be criminal. Up to the end he fulfilled the functions of an official in a ministry and received directives like any other official. He could never have been a political adviser.

In view of the circumstances, the bridge between himself and the alleged conspiracy could have been spanned only by the person of Dr. Goebbels. The witness Von Schirrmeister has repudiated such an assumption. According to his testimony, Fritzsche did not even belong to the closer circle around Dr. Goebbels. Indeed, Von Schirrmeister could even state that Fritzsche often had to apply to him because he could not get Dr. Goebbels' opinion on some question other than through him, as he was Dr. Goebbels' personal press

assistant. Communicating through the state secretaries—for instance, Dr. Dietrich, Dr. Naumann, to mention only a few—also involved certain difficulties. That is not the manner in which conspirators usually communicate. Moreover, the witness Von Schirrmeister has said that it was out of the question that Fritzsche could even have embarked on an exchange of ideas with Dr. Goebbels with a view to forming plans. Now, it would have been the task of the Prosecution to prove to the Defendant Fritzsche where his participation in the conspiracy can be seen. I say that one cannot consider any count of the Indictment as proved.

I think that it was not Fritzsche's official positions at all which led to the bringing of an indictment against him. I rather assume that the latter is solely to be traced back to his broadcast speeches which made him and his name known—but only during the war—both in Germany and perhaps also in a part of the rest of the world. All the serious charges leveled against him can be traced back only to these radio addresses. The other assertions concerning his position within the state or Party apparatus are only based on assumptions or combinations without any factual basis, which is especially evident, for example, from the purely personal and refuted statements of Schörner, Voss, and Stahel. But his name became so well-known only because of the technical means he utilized. Only the great significance of the radio for the modern transmission of news made him appear in a special light. It cannot be denied that in this way he had a great influence on the German people, but from our own experiences of Nazi-ruled Germany, I can well say that every Gau speaker (Gauredner) and many a district leader (Kreisleiter) used much stronger language. But, as a rule, their speeches were published only by the local press.

The defense was handicapped with respect to these radio addresses insofar as the complete text of all of them could not be made available. Unfortunately, the excerpts quoted during cross-examination by the Russian Prosecution could not be supplemented by the entire text of the respective speech; thus there was no possibility of reproducing the sense which the respective address had at the time of delivery. I shall come back to this and give an example later. To submit only single passages or quotations to the Tribunal is especially inadequate, because such excerpts do not show that in his speeches Fritzsche always put the events of the day in the foreground. It was only rarely and incidentally that he drew any general ideological conclusions. But even what Fritzsche has said here about those of his addresses which the Prosecution were able to produce in their entirety shows a completely different picture of the cause and motives of his broadcast speeches. From 1932—that is, already before the seizure of power by National Socialism—up

to 1939, these speeches were nothing but a political press review. And that is what they were called. They were therefore a collection of quotations from domestic and foreign newspapers.

Fritzsche does not dispute the fact that these collections were made on the basis of the interests of the National Socialist State. Only during the war—but right up to the end they were still based on quotations also from the foreign press—did these speeches become the platform for the polemical controversy which in time of war is naturally carried on from both sides. Without any doubt, they greatly contributed toward the formation of political opinion in Germany; but there is also no doubt that many people in Germany listened to Fritzsche's speeches not for their polemics but in order to learn from his quotations at least something about the opinions expressed abroad. For years these speeches constituted purely private work carried out alongside his official position. Only during the war did they come to be considered as semiofficial because of their increasing political news value. Thus—to make it clearer—they assumed approximately the character of editorials in a newspaper which, as one says, is closely connected with the government. It would have been easy for the defense to submit to the Tribunal tons of newspapers dating from the same time, the editorials of which showed the same trend, and even—this can be said quite definitely—used considerably stronger language.

Fritzsche has been able to repudiate most decidedly—and in my opinion quite rightfully—that these addresses constituted an incitement to race hatred, to murder or violence, to hatred among nations, or to wars of aggression. If such an effect could really have been produced by these speeches, absolutely the same reproach should fall upon any editor of the Third Reich who received the "daily directives" from the Reich Press Chief. Fritzsche seems to be accused before this Tribunal only because through technical means he could be heard over a wide range. But it is, especially in wartime—and only since 1939 did his speeches have a political news value at all—in the nature of things, that the controversialist becomes himself the subject of controversy, especially the one whose influence, considered from the standpoint of political news value, extended further technically than the influence of an article in a local paper. Only in this manner did his name become better known to outsiders than names of people who were much more powerful than the publicist.

How far the Prosecution went in their accusations against Fritzsche in his capacity of a publicist is shown by the fact that not only is he supposed to have belonged to the plotting group of conspirators, but that he is also accused of Crimes against Peace. If a propagandist is subjected to such an accusation, there immediately arises the question whether public radio speeches would not be the

least proper means for carrying through criminal aims of a secret conspiracy. Speeches, which can be heard all over the world, could at best be suitable for camouflaging such aims and for misleading the world. But actually, just the opposite reproach is leveled against Fritzsche: he is supposed to have incited other people.

I think I have now dealt at sufficient length with the nature and the character of these speeches. Their importance had to be adjusted to the proper scale in view of the far-reaching conclusions of the Prosecution.

Before going into the details of the charge that by radio speeches, or by other means, Fritzsche contributed toward the various wars of aggression, it is necessary, in a case in which accusations to that effect pertaining to criminal or international law are raised against a publicist, to deal with a legal problem. At no point, as far as I can see, did the Prosecution consider the question of whether and to what extent propaganda—that is, the attempt to influence minds—especially during war, was or still is subject to the rules of international law. Perhaps the problem did not come up only because this question, once it was asked, would have had to be definitely denied. While it is true that the Indictment speaks of the "gigantic propaganda apparatus" during Hitler's dictatorship, which was created as a consequence of the supervision and control of all cultural activity, it does not draw any conclusions for a judgment according to international law. For, as a matter of fact, no generally or specially valid rules concerning this field have ever been established, no sort of prescriptive law developed in this sphere either.

In this connection, it is interesting that in the textbooks of international law no attention at all—as far as I could find out—is paid to this problem. A certain number of textbooks, however, especially those with a tint of natural law, regularly contain in their catalogs of fundamental international law a section on national honor or national dignity. These chapters deduce from the equality of nations, and their living together in a community governed by international law, the demand that the nations treat each other with respect. And they furthermore demand that insults directed against other countries by private persons from their own sphere of influence be prevented, and that if committed, such excesses be punished. But this idea found its positive legal expression only in a number of national criminal codes in which—naturally in peacetime only—the insulting of foreign chiefs of state, for instance,* is made a punishable offense. Another doctrine, which is based less upon natural law, holds that this is not a question of legal obligation but one of international courtesy only. Be that as it may, an international law

* Crimes Against Foreign Countries, Swiss Gazette for Penal Law (Schweizer Zeitschrift für das Strafrecht) 1928, Page 317.

precisely defined in some way does not exist, not even for times of peace, especially not as far as private propaganda through press and writings is concerned. And as to war, any directive in this respect is lacking altogether as I have already pointed out. According to existing rules of international law there are no limits to propaganda against foreign countries in time of war. Consequently, there is only one barrier to this propaganda—namely, the great barrier which governs all the rules of warfare that everything is permitted *quod ad finem belli necessarium est.*

In view of the tremendous importance of psychological influence upon the will of individuals and nations, it is beyond doubt that propaganda can be an important and, in certain cases, even decisive means of war, no less important than, for instance, economic warfare or even warfare with weapons. Propaganda in this case has a double task: First, to serve as a means for increasing the power of resistance of one's own nation, and second, to undermine the fighting powers of the opponent. This influence—whitewashing on one side, slandering on the other, concealment of facts, *et cetera*—is essentially nothing else but a stratagem which, within the framework of the rules of land warfare, has been expressly declared as a permissible instrument of warfare, according to Article 24 of the Hague Rules of Land Warfare. In this connection, it may be pointed out that spying—also a form of war stratagem—had likewise been declared as a permissible instrument of warfare by the Hague Rules of Land Warfare.

What has been said here is in complete accord with what is practiced by all countries; defamation of the opponent and his statesmen, making the opponent contemptible, falsifying the motives and intentions of the enemy, slanderous assumptions, assertion of unproved statements—all this belongs unfortunately to those means of propaganda which during a war are used on all sides and at an increasing rate.

Minor attempts, but only for the purpose of preventing war, are known from the time before the first World War. At that time, they had an even farther-reaching aim—namely, to contribute in general to an understanding among nations by means of a general moral and spiritual disarmament *(désarmement moral).* However, this goal was not reached before the first world conflagration of this century. After 1918 though, as a reaction after the great armed conflicts, this aim received a stronger uplift and became known to the world through the tasks imposed upon the League of Nations in this respect. This was indeed the first real attempt to start an intellectual disarmament. At the fifth session of the League of Nations in 1925 in Paris it was decided to found an institute for intellectual co-operation *(coopération intellectuelle).*

Further investigations, which lasted for years, resulted in numerous proposals, in the establishment of general committees and subcommittees, of sections and committees of experts with an incalculable wealth of documents. But nevertheless none of these great efforts converted the idealistic impulse and the longing of the nations for a "spiritual disarmament" and intellectual co-operation into sober and concrete legislation which would have imposed legal obligations on the individual states as well as on their nations. No results were achieved in pointing a way which in time of war would prevent hatred, incitement, distortion of facts, and provocation of other nations or nationals of other countries in all the possible modern forms of expression.

Even such well-defined and comprehensive propositions for a moral-intellectual disarmament as those presented by the Polish Government to the League of Nations in two memoranda of 17 September 1931 * and 13 February 1932 ** had the same fate. These propositions aimed at using national legislation to prohibit any propaganda which might become dangerous for peace, and even any propaganda which aimed at a mere disturbance of the good relations between nations. Influence was to be exerted not only upon the big public news media but also upon the vast ramifications in the administration of every modern state, including even the revision of schoolbooks. These propositions which advised member states not to recoil even from censorship and measures of prohibition finally came to nought because they stood in direct contradiction to the deeply rooted conception that freedom of expression of opinion in intellectual matters could not be undermined by such exceptionally far-reaching police measures; this freedom of expression had to be preserved as an "inalienable right" granted by the Creator. And this opposition on fundamental principles ended matters. We have in the course of the Trial seen ample evidence of the effect which censorship and control of the press, radio, and films may have.

The few bilateral agreements which were concluded after the failure of the Polish propositions of 1931 and 1932 are not worth mentioning here. They are concerned with certain forms of propaganda only, and solely with periods of good international relations. We can only express here the hope, therefore, that on the basis of international solidarity it will in the future be possible also to reconcile these two still opposing theses on a higher level.

* Letter of the Polish Foreign Minister to the General Secretary of the League of Nations. Official Number C. 602. M. 240. 1931. IX (Conf. D. 16); also reproduced in Peter Dietz' Geistige Abrüstung, Pages 137-143; Erlangen Library under the Number U 36/3564.

** Propositions of the Polish Delegation covering the progressive achievement of moral disarmament. Official Number Conference D. 76; reproduced also in Dietz, Pages 143-145.

In the course of this Trial a secret order was produced which had been issued by the High Command of the Armed Forces on 1 October 1938 (Document C-2). This document showed that the division for international law in the OKW had drawn up a chart for the event of an armed conflict, and this chart was to show the principles for dealing with any possible violation of the rules of warfare by friend and foe. With the knowledge of the legal vacuum existing in the field of propaganda in its broadest sense, it is stated there that from the point of view of international law it is absolutely permissible to make the opponent contemptible and to try to undermine his strength "regardless of how many lies and falsehoods are used for this purpose," and that from the legal standpoint a rule for the future could even be established to the effect that if the enemy employed such propaganda, defense by means of "counterattacks" would be legally possible, and whereby "naturally the propagation of atrocity lies" must also be used. This may sound cynical and brutal. But unfortunately it fitted in with the customs of war, or rather, this undisguised statement originated in the legal lacuna which could actually be found in international agreements and in prescriptive law. Dr. Kranzbühler rightly stated here: In war the duty to tell the truth does not exist.

Owing to the period of time which has elapsed since the first World War and its propaganda methods on both sides, we can today consider the events of those days as belonging to history. At that time, too, all belligerents gave great consideration to their efforts to undermine the enemy by means of propaganda. But the legend of children's hands cut off by German soldiers—a war lie, as Arthur Ponsonby proved in his book *Falsehood in Wartime* *—was still alive in a French schoolbook even in the midst of peace, nearly 10 years after the first World War.** Publications of all belligerent countries—drawings and cartoons dating from the time of the first World War alone—can be found in masses in all libraries. Many will still remember the film *The Four Horsemen of the Apocalypse* which showed terrible atrocities, and circulated almost throughout the whole world at the time of the first World War. Legally, this matter had unfortunately to remain unsettled up to this point. In view of the goal striven for by Justice Jackson in this Trial of creating a new international law, can the case of the Defendant Fritzsche as a publicist in the Nazi State be included

* Arthur Ponsonby, M. P., Falsehood in Wartime, containing an assortment of lies circulated throughout the nations during the great war, published in London by George Allen and Unwin Ltd., Museum Street, 1928.

** In a schoolbook for Lorraine: Deuxième livre du syllabaire Langlois: (Second book of the Langlois Primer); which was still in use in 1927, and which refers to these alleged events on Page 156 under the heading "Remember"; reproduced in the Informations d'Alsace-Lorraine of 20 March 1927.

retroactively? Can the desire of the Prosecution to see Fritzsche punished as a war criminal be derived from their assertion of a logical development of existing laws (Sir Hartley Shawcross, Session of 4 December 1945, a. m.) when up to now nothing, absolutely nothing, has been legally and properly ruled upon in the field of propaganda, and no promising beginnings of any kind have appeared in this direction? Here it is certainly not a question of only an apparent legal loophole (Session of 4 December 1945).

What has been said, of course, does not include those cases in which individual crimes were actually incited by means of propaganda. Therefore, I shall now go into the individual charges of the Prosecution in order to show that Fritzsche is not guilty of having committed such acts.

As far as the alleged crime against peace is concerned, the Prosecution act on the assumption that any important political and military attack on the part of the German state leadership was preceded by a press campaign. Therefore, the Nazi conspirators must have used the press also as an instrument of foreign policy and as a feint to cover subsequent aggressive action. From that general, perhaps even correct, description of such intentions, the far-reaching conclusion is drawn that Fritzsche may also be partly responsible for them. Such responsibility would be based merely on the chronological circumstance that he was the Chief of the German Press Division within the official Ministry of Propaganda from December 1938 to the spring of 1942. But the premises are lacking for this conclusion. It could only be justified if it had been successfully proved that Fritzsche was the real creator and inspirer of all those press campaigns. But Fritzsche, if only because of his subordinate position—subordinate not only in regard to the departmental organization but also compared with the real leaders of propaganda, Hitler, Goebbels, Dietrich, and others—could know only what his superior passed on to him—as well as to other civil servants—as the historical truth.

May I bring to mind the fact that all witnesses who have testified in any way about the influence of the foreign policy on the press always pointed out that before beginning any political—and especially before beginning any military—operation, the Foreign Office justified the measures taken in the field of high policy before the public in White Books prepared by them. Just as in the case of other intentions or goals of the highest leaders of the Third Reich, the press, too, was informed in these cases only of that which the general public was permitted to learn, while matters not destined for publication were kept secret.

After hearing the evidence, what was the actual relation between the propaganda furnished by Fritzsche and the various military invasions, and what did he know of their background?

At the time of the occupation of Bohemia and Moravia, instructions were given him by the Reich Press Chief only a short time before the decisive step of 15 March 1939. These consisted, as in all other cases, of so-called "daily directives" (Document Number 3469-PS) which were given out at press conferences. Such daily directives thereby received publication in the headlines of German papers. It may be mentioned here, that the best known organ of the Party—namely, the *Völkischer Beobachter,* due to its direct connection with the Reich Press Chief and, during the war, with the Führer's headquarters—was more independent of such daily directives, considering that it had a foreign news service of its own. What was printed in the *Völkischer Beobachter* does not, therefore, represent what had been approved by Fritzsche as leader of the German press. At that time, Fritzsche had already—and this attitude is of greatest importance with regard to all of his activities—established the principle for his press reports that untrue news should never be given to the press. The apparent reason for that was the fact that his predecessor in the German Press Division, Berndt, had had all kinds of news spread during the Sudeten crisis, by which he lost the confidence of German editors. Fritzsche, as well as the witness Von Schirrmeister, gave details about these matters on the witness stand.

It is not apparent in what respect Fritzsche played a greater part than any other officials or officers when the German troops marched into Czechoslovakia. Fritzsche knew just as little about what has been disclosed in this Trial about Hitler's secret intentions at that time as he could have known about the Case Green plan. As head of the domestic press, he could have exercised no influence whatsoever on the propaganda possibilities which were to be made use of within Czechoslovakia proper (Document Number 998-PS).

The same is true of the Polish campaign. Here too, Fritzsche did not speak a single word in favor of any armed conflict, or deliberately spread any stories which might have supported any bellicose intentions. Even in his radio broadcast of 29 August 1939, which was held against him during his cross-examination (Session of 28 June 1946, Document USSR-493) he points out explicitly that there could not in fact exist any serious doubt about the German desire for peace. These and many other passages are particularly significant in proving Fritzsche's good faith. He has expressed here his and the German nation's disappointment that this desire for peace, which Hitler emphasized repeatedly, proved to be a lie, even a fraud. If one examines the full text of all the other broadcasts by Fritzsche shortly before and during the Polish campaign, none of his statements can be interpreted as favoring that war of aggression. The official reasons given at that time convinced Fritzsche, as well as millions of other Germans, that right was on

Germany's side. It was because Fritzsche had shared such a conviction, at that time, that he declared here on the witness stand that he, too, felt that he had been deceived by Hitler.

It was no different in the case of Yugoslavia. Here likewise, Fritzsche was able to learn only what facts were given to him and the many editors by the Reich Press Chief, facts which Fritzsche had no opportunity to verify if only because of the speed with which these events were developing, even if the thought could have struck him during the course of events that maybe the press was being made use of to provoke warlike measures.

The role of the press before the surprise attack on the Soviet Union was made particularly clear during this Trial. For reasons of strategy alone the entire propaganda machine—also including Fritzsche, as head of the Home Press Division—was not permitted to know the slightest thing about it in advance. It was especially this same campaign which Goebbels cleverly kept secret by simulating an intended German invasion of England. At that time, Goebbels deliberately led even his closest assistants on that wrong track, as was stated here by the witness Von Schirrmeister.

Fritzsche's statement that he did not know anything about the secret preparations through the formation of a so-called Eastern Ministry was not refuted by the so-called Rosenberg report, which was read to him during cross-examination (Document Number 1039-PS). This is a document which has also played a part in other connections because of the many names it contains. At the same time, it is the only document which includes the name of Fritzsche in connection with any secret plans. From that document, which according to established facts was drafted by Rosenberg and some of his associates sometime around 28 or 29 June 1941—thus, after the start of the campaign—it is impossible to draw the conclusion that Rosenberg spoke with the Defendant Fritzsche before the decisive date. The draft does not bear any date or signature. Besides, Fritzsche is mentioned in it by the title of Ministerial Director which he was not given until the fall of 1942. This does not in any way appear to disprove Fritzsche's statement on the witness stand that he never had been informed by Rosenberg either about an impending war with the Soviet Union or about the intended formation of an Eastern Ministry. Not until after the beginning of that campaign, and after the official announcement that a new Ministry had been established, were Rosenberg's wishes with regard to the treatment of Eastern problems in the German press forwarded to him by the former's assistants.

Thus Fritzsche's deposition still holds, that in the case of the war against the Soviet Union, just as in the other cases, he did not learn anything until the moment when he was given the pertinent news for publication. You will grant that this does not permit

the conclusion that he played the role of a conspirator who helped draw up the general plan, or at least knew of it. And it cannot properly be assumed that Fritzsche knew anything about the plans of the High Command of the Armed Forces in June 1941 (Document C-26), or even of the Bormann Protocol of 16 July 1941 (Document L-221)—both of which were submitted to him during his cross-examination. These negotiations show that actually they could have taken place only in the innermost circle. Moreover, the evidence which did not concern Fritzsche directly has shown that even military methods of deception had been used to conceal the plans. This has been stated by the witness Paulus and becomes clear from the report of the German military intelligence service (Document 1229-PS). The nature of all these things was such that they could well be withheld from a newspaper man. Even the witness Gisevius, who after all was always engaged in ferreting out secret ends, had to point out how much effort was required even within the High Command of the Armed Forces to obtain information, at any time, as to whether Hitler was planning a war or not (Session of 25 April 1946).

Accordingly, I can state in conclusion that the emphatic assertion of the Prosecution that Fritzsche as Goebbels' accomplice helped the latter to plunge the world into a blood bath of wars of aggression (Session of 23 January 1946) is not justified. During my examination of Fritzsche he pointed out, in contrast to this, that whatever the facts may have been in individual cases, at every moment, from the advance into Austria to the invasion of Russia, he and the German public were given only such information as seemed to justify the necessity of the German actions.

Now, one could also conceive the charge of a crime against peace to be that Fritzsche constantly called on the German people to hold out during the conduct of a war of aggression. Naturally he did not spread any defeatist propaganda in the course of his radio speeches. I must, therefore, discuss the question whether this, or any sort of participation in a war of aggression, after the latter had broken out, should be considered as participation in the crime against peace and should be punished accordingly.

The French Chief Prosecutor, M. de Menthon, tried to draw the conclusion—proceeding from a literal interpretation of Article 6, Paragraph 2 (a) of the Charter, without regard for the real meaning of this article—that the soldiers and other agents of the aggressor state could not undertake any military operations at all which could be justified by international law. However, he was obviously compelled to recognize that in practice this idea must lead to impossible consequences. Thus, for example, he recognized the Hague Convention for the Rules of Land Warfare as a law which not only obligates aggressor and attacked nations alike, but also gives them

rights. He thereby let it be clearly recognized by implication that, in his opinion, this stipulation of the Charter is to be interpreted restrictively.

In Article 6, Paragraph 2 (a) of the Charter the following are defined as Crimes against Peace: "The plan, the preparation, the introduction, and"—according to the German translation "Durchführung"—"waging of a war of aggression." "Durchführung" is the translation of the English word "waging." It would probably be more correct to translate it by "unternehmen" (undertaking). But in its natural sense, "unternehmen" means about the same as "beabsichtigen" (intending); whoever undertakes, pursues, intends something, has not executed it yet. The word "durchführen" could create the opinion that the crime against peace was not concluded with the outbreak of war, and therefore could extend over its entire duration. The result of this conception would be that all persons who participated in war operations, as, for instance, the Army leaders, all members of the Armed Forces, and, besides that, all persons who supported the war in any way—even by deliveries of war material and through radio broadcasts—would be punishable according to this stipulation. They had thereby at least contributed support to the waging of war. These persons could even be criminals against the peace, if they had in no way participated in the planning or preparation of it before the outbreak of the war, and even if they had no idea that any aggression was involved.

In reply to this, the following must be stated: Only those persons can be considered as waging a war of aggression who planned it themselves. They were just carrying out their common plan by starting the war, with or without a declaration of war. Thus "carrying out" is to be placed on the same level as "beginning." The accusation of a crime against peace can affect only those who also planned it. This is supported by the following reasons. The punishment is intended to protect the peace against wars of aggression—that is, against unlawful wars. At the moment that such unlawful wars start—are "unleashed," as the Indictment puts it—the rightful domain of peace has been violated; the crime against peace is consummated and accomplished. Therefore, no other meaning but "bring about," "proceed to execute the plan," can be attributed to the term "carry out," or "undertake"—"waging."

This interpretation is also consonant with the historical development of the concept of "crime against the peace" in international law. For years international law has made a distinction between war crime in the narrower sense and war guilt in the broader sense. War crimes are offenses against the rules of warfare, which have been established by agreement or custom, against the customs of war and, going further, also offenses against humanity. War

guilt means being guilty of having brought about war, in particular an unjustified war of aggression.

This distinction also made its appearance during the negotiations about the peace treaty after the first World War. This has found expression in Article 227 *et sequentes* of the Treaty of Versailles. There can be no doubt that the concept of a crime against the peace within the meaning of the Charter is intended to be the same as this war guilt in its previous sense in international law. Article 6, Paragraph 2 (a) is supposed to refer to war criminals—that is to say, those who bring about an unlawful war.

The view that the subsequent support of a criminally instigated war was likewise a crime against peace necessarily led to entirely untenable consequences. In such a case, hardly one citizen of a country which had started a war of aggression would be guiltless. In its present-day form, war is no longer, as in former times, limited to an armed conflict between the armies. Just as both World Wars have shown, it has been extended to include the belligerent nations in their entirety and all their spheres of life. It has grown into total war—total in the sense that everybody participates in it. Even the woman who is making screws in a factory is a participant in this total war. And, as Professor Exner so vividly explained in his final speech, in a war of aggression every capture of prisoners would mean a deprivation of liberty, every requisition a robbery, and every shot a murder. To want to make all members of a nation responsible as authors of crimes against peace would be absurd. Moreover, a classification as to the kind and degree of a person's contribution toward a war which had broken out would be impossible as a practical matter.

Crimes against Peace, therefore, can only be committed by those who participated in breaking the peace—while the vast majority who did not participate in it could not be counted in this category.

The point of view which has been developed here is, in my opinion, also represented in the Indictment. The latter views the crime of breaking the peace as realized by the act of "unleashing" (Entfesselung). In no place has it even been hinted that the crime itself, or its continuation, is seen to consist in the participation in a war or in supporting it by furnishing services or supplies of any kind. Even according to the phrasing of the Indictment, from the moment of the beginning of war onward, only crimes of the second and third group come into question—that is to say, War Crimes in the narrower sense of international law, and Crimes against Humanity.

In my opinion, Justice Jackson in his opening speech of 21 November 1945 also adopted the point of view which has been advanced here, whereupon Justice Biddle pointed out to him in

the session of 1 March 1946 that, at that time, he had indicated that beginning the war was the essence of the crime and not actual waging of the war. That means, in other words, that with the beginning of the war of aggression, the Crime against Peace within the meaning of Article 6, Paragraph 2 (a) of the Charter, was consummated (breach of peace).

From these statements it follows that any activity in furtherance of the war during the war cannot represent any criminal act, nor can Fritzsche's radio broadcasts which he made during the war.

THE PRESIDENT: The Tribunal will adjourn now.

[The Tribunal adjourned until 25 July 1946 at 1000 hours.]

ONE HUNDRED AND EIGHTY-SIXTH DAY

Thursday, 25 July 1946

Morning Session

THE PRESIDENT: The Tribunal will sit on now until 1 o'clock without any interruption.

I have an announcement to make.

When counsel for the Defendant Hess first made his argument, the Tribunal directed that he should rewrite it and submit it for the Tribunal's consideration, as he had continually disregarded the Tribunal's directives that the alleged unfairness of the Versailles Treaty should not be argued.

The argument as now rewritten by Dr. Seidl has been carefully considered by the Tribunal. It still contains many allusions to the unfairness of the Versailles Treaty, irrelevant material, quotations not authorized by the Tribunal, and other matters which have nothing to do with the issues before the Tribunal. The Tribunal have, therefore, deleted the objectionable passages and have directed the General Secretary to hand a marked copy containing the deletions to Dr. Seidl.

That is all.

The Tribunal direct Dr. Seidl to get in touch with the General Secretary's representative. He will then see the passages which the Tribunal consider objectionable.

Now, Dr. Fritz.

DR. FRITZ: Mr. President, Gentlemen of the Tribunal: Yesterday afternoon I concluded my statement in response to the charge that the Defendant Fritzsche was guilty of a crime against peace.

The next group of accusations leveled against the defendant is, for instance, characterized by such terms as incitement against Jews, incitement against foreign nations, instigating the exploitation of occupied territories, propaganda for the master race.

On the witness stand, Fritzsche made a declaration which represents a summary of the knowledge he gained after the collapse and, above all, here in Court. It ran as follows: An ideology in whose name 5 million people were murdered must not be permitted to survive such a record. Now, to what extent did Fritzsche make

propaganda for this anti-Semitism? Could he, by doing so, foresee the murder? Did he approve of it or at least accept it as inevitable? The Prosecution went very far in their assertions. They imputed that Streicher, as "the chief Jew baiter of all times," could hardly have surpassed Fritzsche in his defamation of Jews. Fritzsche defended himself against this accusation, and rightfully in my opinion. A mere comparison of the slogans from the "arsenal of anti-Semitism," which Sir Griffith-Jones read for hours from excerpts from *Der Stürmer* at the session of 10 January 1946, with Fritzsche's statements submitted here by the Prosecution, shows this very clearly. Fritzsche, supported by the affidavit of Scharping, dated 17 May 1946 (Document Number Fritzsche-2), was able to point out what actions he undertook against this paper. It must also be noted here that the language and arguments of *Der Stürmer* found no echo in any German newspaper or at a single broadcasting station even of the National Socialist regime.

Before the war Fritzsche carried on no anti-Semitic propaganda of any kind. All utterances and statements of his submitted by the Prosecution originated during the war. They are, however, not directed against the Jews as a people or as a race, but are related only to the question of the origin of the war. They were merely casual, polemical remarks on the Jewish question in the propaganda battle which was fought in this war alongside the battle of arms. This explains the fact that the radio addresses submitted by the Prosecution never contain more than casual remarks, and never speak of the Jews alone. Every one of his radio speeches may be examined in this respect. Nor does there exist a speech by him which dealt exclusively with the so-called Jewish problem. He never undertook to talk on such a subject. Fritzsche always spoke, at the same time, of "plutocrats," "bolshevists," "democrats," and used other such phrases by means of which the propaganda of the Third Reich felt obliged to conduct its fight. During his interrogation he dealt in detail with each of the radio addresses submitted in the Trial and discussed the reason he had each time for making his merely incidental remarks on this subject. An examination of all of his statements over the radio would show that of all the fundamental propaganda subjects of Nazi ideology, Fritzsche mentioned and advocated anti-Semitism least of all. This takes all foundation from the conclusion of the Prosecution. For there cannot be any connection between such occasional remarks on the part of Fritzsche and the murder order given by Hitler. I therefore expressly protest against the accusation that Fritzsche be considered more guilty than those men who carried out the shootings (Session of 23 January 1946).

In the course of this Trial we have heard much testimony as to what secret and ultrasecret means and methods were used by the

really guilty ones to carry out this horrible murder. So many statements cannot be put aside as irrelevant and unreliable. In contrast with former assumptions, this Trial should have made it clear that there existed only a small group of instigators and abettors. It has not been proved, in the least, that a man like Fritzsche belonged to this closest circle of Hitler's despotism. The Trial has even shown that he made the acquaintance of the majority of his codefendants only here in the dock. To draw such far-reaching conclusions against Fritzsche would necessarily lead to the assumption that everybody who took a public stand for anti-Semitism as such—if only with reservations—bears the same criminal guilt. The extent of the moral guilt is much greater. But we are concerned with it only insofar as the moral guilt is identical with the criminal guilt. And, therefore, there is no need to discuss here how far a mere error—even a political one—may at the same time become immoral. The accusation, however, of being coresponsible for these murders, was an especially deep blow to Fritzsche.

With regard to this it might be objected that, although Fritzsche did not maintain very close relations with his chief Goebbels and the other heads of the news service, he was yet one of those persons who had access to the foreign press and radio news. This is perhaps the reason why Fritzsche is accused of having had knowledge of almost everything that happened during Hitler's rule. Fritzsche was able to state in the witness stand, while giving many details, that even with this opportunity his good faith was not shaken in the decisive—perhaps also moral—questions. Just as little as his profession as journalist gave him the opportunity to follow rumors up on his own, just so little in this way would he realize what was actually happening. The barriers which had been erected around the misdeeds, however, could not be broken down by him through these means.

With regard to foreign reports on atrocities and other misdeeds, Fritzsche, as well as Von Schirrmeister and, especially, Dr. Scharping, have stated that the examination by the office "Schnelldienst"—express news service—which was carried out in all cases, resulted time and again in official replies which eliminated doubts as to the inaccuracy of such statements from abroad. This office, the "Deutscher Schnelldienst"—German news speed service—which had an entirely different significance from that claimed by the Prosecution, was a control agency created especially by Fritzsche in order to have foreign news tested as to the truth of its contents through inquiry at the competent German official agencies. If the Defense had succeeded in submitting the records of this "Schnelldienst" to the Tribunal, documentary evidence could have been offered in every detail for the way in which German authorities answered inquiries of this kind. For instance, the Reich

Security Main Office knew in a masterly and deceptive way how to make its replies sound credible. The foreign propaganda which was to serve a definite purpose could in comparison lay no claim to a greater power of persuasion—this all the more since the enemy propaganda in wartime also brought, of course, really incorrect reports, of which fact Fritzsche often felt quite convinced.

Furthermore, Fritzsche has been accused of advocating the doctrine of the master race. The only statement by Fritzsche himself which the Prosecution submitted in regard to this point shows clearly that Fritzsche neither championed nor promoted such an idea; that, on the contrary, he expressly rejected it. An examination of the quotation presented by the Prosecution does not leave any doubt about it. Beyond what the hearing of evidence—the witness Von Schirrmeister and the affidavit of Dr. Scharping—has shown as to how Fritzsche prohibited the use of the words master race for press and radio altogether, Fritzsche himself under oath termed this accusation nonsensical. Therefore, after thorough examination of all obtainable speeches by Fritzsche, I can only state that this charge is untrue. Nothing is changed in regard to this statement by the fact that Voss and Stahel (Documents USSR-471 and 473) judged differently without giving any concrete facts. I have already dealt with the value of those documents as evidence.

Fritzsche allegedly stirred up hatred against foreign peoples. To prove this serious charge the Prosecution emphasized several excerpts from two of Fritzsche's radio addresses, which were held on 5 and 10 July 1941. In order to be able to understand correctly the circumstances underlying the speeches, one must take into consideration the dates on which they were held. They were made shortly after the attack on the Soviet Union. He is not charged with any further statements—made, for instance, at a later time—or similar ones which might lead one to suppose some systematic line of thought. When the passages cited by the Prosecution were supplemented by the full text of the speeches, and by the examination of Fritzsche on the witness stand, it was shown that Fritzsche did not slander the peoples of the Soviet Union. Neither could what had led up to these speeches have given him any reason to stir up hatred against that country. They were held shortly after German sources, and in particular war correspondents, had reported atrocities in towns in Galicia which had been conquered by German troops. These were things which were reported everywhere in Germany—and also by foreign correspondents—in print, pictures, and motion pictures. In this respect, there was an especially great volume of material, and in his speeches Fritzsche expressly referred to it. Fritzsche's statements reflect the agitation of the German public over these reports, and he pointed to those presumed to be guilty of the atrocities. The facts, as such, were also confirmed by

the Russians. The latter added, however, that not the Russians but the Germans were guilty of these actions. What happened was only that, on the basis of undeniable facts, a controversy had flared up as to the responsibility—just as happened later in the famous case of Katyn—in which both sides morally condemned the instigators.

In neither of those speeches, as an examination of their entire contents would reveal, did Fritzsche designate entire nations as inferior or subhuman. His phrases about subhumanity referred only to those culprits whom in real indignation he pilloried as morally contemptible. He found it reasonable to believe the proofs presented by the Germans, and, therefore, there is no reason to assume that, at the time he held the speeches, he could have predicted what actually was to happen in the East much later. Therefore, there could not have existed any intention on his part to stir up his audience to engage in similar actions. It is impossible to establish any causative connection on the basis of two such words he had once spoken.

The same is true of the excerpts from a speech of 29 August 1939, which General Rudenko read to him during his cross-examination (Document USSR-493). That broadcast also refers to atrocities committed shortly before the outbreak of the war in Bromberg, and concerning which, on the day of the speech—that being the reason for it—an official *White Book* had been published. It contained a short account of the results of an investigation of those atrocities. Only the guilty ones were designated by Fritzsche as inferior human beings. But it is not justifiable today to generalize this opinion to such an extent, as if he had designated the entire Polish nation as inferior. Fritzsche considered the representation in the official *White Book* as correct. He could not have doubted the fact that Poles had killed Germans. However, no word in that speech allows for the conclusion to be drawn that he envisaged the possibility or even suggested that the Slavic nations be exterminated. Fritzsche no more than the German people could imagine anything like it at that time.

General Rudenko attempted in his cross-examination to prove that my client had made false statements. For that purpose an excerpt from his broadcast of 2 May 1940 was presented to him (Document USSR-496, Session of 28 June 1946). This is the example I mentioned before as proof of the insufficiency of such evidence in general. In it Fritzsche gives a description of the towns, villages, and hamlets in Norway which he had visited shortly before, and which had been spared by the war. The Russian prosecutor pointed to the official report of the Norwegian Government (Document 1800-PS) enumerating the damages caused by the war. Thus the impression was created that Fritzsche had lied to his audience.

The full contents of that speech show, however, that the quoted sentences regarding undamaged houses in Norway stand directly next to other sentences in which Fritzsche himself depicts the destruction caused by the fighting in Norway. The speech does not contain a lie if Fritzsche reported in it that in other parts of the country he visited not the slightest trace of fighting was found. His description, therefore, is not in the slightest contradiction to the Norwegian Government report.

At this point, I should like to insert a few remarks about the case of the *Athenia*, and the part that Fritzsche played in this connection. This case shows to what extent Fritzsche was at pains not to retransmit reports until they were proved to be true and reliable. But it shows, also, how dependent Fritzsche was on the version of the official German offices. This is evidence of his good faith; for it seemed natural to him, and he took it for granted, that official announcements were to be accepted without questioning, and this conviction could not, at that time, be shaken.

That particular article in the *Völkischer Beobachter*, dated 23 October 1939, has been rightly described in this Trial by all parties as contemptible. Now, Fritzsche also engaged in polemics on this point in sharp although not similar terms. I take the liberty of pointing out that such remarks could be morally condemned only if Fritzsche had known beforehand that it was actually a German submarine which sank the *Athenia*, but, as he has testified under oath, this fact first became known to Fritzsche here in Nuremberg, in December 1945. Up until then, he was the very person from whom this decisive circumstance was withheld although he had, through the naval liaison officer, undertaken investigations at the High Command of the Navy, and other official offices within the Ministry of Propaganda, concerning the assertions made in foreign reports.

To support the charge that Fritzsche instigated the ruthless pillage of the occupied territories (Session of 23 January 1946), the only evidence submitted is a statement made on 9 October 1941. In this, a passage from a public speech made by Hitler a few days before is reproduced. I have taken the greatest pains to find any instigation for the ruthless pillage of occupied territories in this quotation, or in the remarks made by Fritzsche about it in his radio address. It is impossible for me to see how any one sentence can possibly convey anything to this effect. I can only assume that it is a case of a misunderstanding and leave it for the Tribunal to judge. In no other connection has Fritzsche spoken a word or given a hint to this effect and, least of all, openly called for such a thing. Moreover, it is to be gathered from Dr. Scharping's affidavit, dated 17 May 1946 (Document Fritzsche-2), that the use of any kind of coercive means against other nations would have run counter to

the purpose of his whole work, including that within the Ministry of Propaganda—namely, to gain the voluntary co-operation of the European peoples.

It has also not been proved that Fritzsche really knew about the manner in which foreign workers were actually recruited. I would point out that the Defendant Sauckel stated that he had only one brief and unofficial talk with Fritzsche, and that in the beginning of 1945. In his affidavit Fritzsche further gave exhaustive details on the fact that he obtained extensive material from competent authorities to be brought to the attention of the German public, and in which the voluntary character of the recruitment of workers for employment in Germany was continually pointed out. It is not to be assumed that any information concerning this was given to the Ministry of Propaganda other than that provided by Sauckel in his report to Hitler (Document 407-PS).

Moreover nothing has proved that Fritzsche approved, or even used for propaganda purposes, the violations of international law already committed or intended, such as the so-called Commissar Order, or the lynching of enemy aviators who had been brought down. With regard to the Commissar Order, the Russian Prosecution charged that the defendant, as a soldier, a member of the 6th Army, received knowledge of this decree. This has been confirmed by Fritzsche. He could, however, point out that his attitude had not only been passive; he even, and this must be said, took a successful stand against this by way of proposals to his commander-in-chief, the witness Paulus (Session of 12 February 1946). General Rudenko's charge that in spite of this he remained in Hitler's service—although he should at least have assumed that Hitler was the author of such an order contrary to international law—is not a reason for accusing Fritzsche as a propagandist, or even as far as his ethics are concerned. Gentlemen, if such an accusation with a criminal legal foundation could be made, it would affect every German soldier who fought on for his fatherland in the East after the autumn of 1942.

Fritzsche also protested against the fact that Allied fliers were to be treated contrary to international law. When he learned this, he spontaneously refused any propagandistic activity for Goebbels in this respect. These facts have been definitely ascertained through thorough examination of him on this subject and through Dr. Scharping's affidavit (Document Number Fritzsche-3).

Furthermore, no charges can be made from what he said in his radio speeches, about the use of new weapons and the Werewolf movement with which he has been charged by the Russian Prosecution on cross-examination (Document USSR-496). I can be spared mentioning particulars in this connection because Fritzsche testified in detail. The speech of 7 April 1945 (Document USSR-496), with

which he is reproached, does not in the least glorify forms of warfare contrary to international law. It rather attempted to find a psychological reason or excuse for the active participation of civilians in the fighting toward the end of the war by referring to the suffering of the German people through the effective air warfare of the Allies.

I still have one point of the evidence to refer to. General Rudenko submitted to Fritzsche a short document at the end of his cross-examination (Document USSR-484). It is a copy of a short message, signed by Fritzsche, dated 19 October 1944, addressed to Major Von Passavant, a wireless expert of the Propaganda Branch of the OKW. The Russian Prosecution wish to conclude from the contents of this communication that Fritzsche had committed himself in the preparation and execution of some kind of "biological war." Such a conclusion cannot possibly be drawn from the contents. It is merely a covering message of five lines referring to the transmission of a letter of a radio listener to another department. Fritzsche's department received daily whole stacks of letters from unknown radio listeners. A subordinate official looked through such letters, of which hundreds arrived daily, and directed them wherever they would perhaps receive special consideration. The letter of the radio listener Gustav Otto, from Reichenberg, which apparently contained a suggestion to carry out biological warfare, followed exactly the same route. Although Fritzsche, in his capacity of department chief, signed the transmitting letter composed by the subordinate official, he naturally did not know anything about the contents of the listener's letter. In view of the large number of daily communications from listeners, it was completely impossible for him to read them. This listener's letter, in any case, did not receive any special attention in the broadcasting department. The copy of the transmitting letter, as can be seen from pencil notes made thereon, was also immediately filed. How can anything unfavorable be deduced against the Defendant Fritzsche from this sort of evidence? Especially as it is completely unknown what the unknown listener meant by a "biological war."

Finally, I have yet to point out the following. General Rudenko read the document on the occasion of the cross-examination (Volume XVII, Session of 28 June 1946), and from a Russian text; the German text, which appears in this form in the German transcript, and the English text, which appears in this manner in the English record, differ considerably in content from the original German text. If notwithstanding the insufficiency of this document—the meaning of which could in any case be clarified only by the appendices which are lacking—the Tribunal believe it deserves consideration, the first requirement would be to have exact translations made from the original German text.

In concluding my evaluation of evidence, I wish to say that none of the documents brought up during the cross-examination of the Defendant Fritzsche could modify the impression which he gave us during direct examination—that is, his having spoken sincerely and truthfully before this Tribunal, and that because of his own desire also to make every possible contribution on his part so that an actual foundation for a proper judgment may be found. And going even further, all the statements made by Fritzsche were supported in all decisive points by the documents which I submitted, and particularly through the testimony of the witness Von Schirrmeister. The latter, who during the most important period between 1938 and 1943 was the daily companion of Goebbels, was able to report directly, and, I dare say, with great clarity, on the true conditions in the Ministry of Propaganda. The result of the evidence—I may repeat here what I expressed in my introduction—was unequivocal for my client.

Contrary to the announcement made by Mr. Albrecht, which I mentioned at the beginning of my final pleading, nothing during the proceedings could corroborate the contention that Fritzsche's importance in reality was greater than that shown in the diagram of the Ministry of Propaganda. The discussion of the bare facts alone ought to have made clear that Fritzsche can bear no responsibility for what is the actual part that may have been played by the extensive propaganda machinery of the Third Reich in the plans which were in the hands of a small initiated circle. If the restricted department in which Fritzsche worked was misused, then Fritzsche himself was misused. The assumption that Fritzsche was Goebbels' closest collaborator, his right-hand man, so to speak, and even his acting deputy—an assumption from which the bulk of the accusations leveled at him are probably derived—is refuted by facts which have come up for discussion. The odium against Fritzsche, on the alleged ground that he bears a responsibility equal or similar to that of Goebbels, has already been definitely shown by the evidence to be unfounded. Even from the dealings and actions themselves of my client it ought to have become clear that the assertions of the Prosecution have gone much too far.

In the legal consideration of those acts and dealings of Fritzsche by Captain Sprecher, it was quite striking that—as far as I can see, at only one point and here, too—as distinct from the other defendants was the quite general conclusion drawn that Fritzsche was, during a definite period, a principal conspirator because he was directly entrusted with the manipulation of the press (Session of 23 January 1946). I need not mention again at this point that the factual prerequisites for such an opinion did not exist. Now I am only concerned with establishing, with regard to the legal qualification

by the Prosecution themselves, that in discussing his case his activity will be judged only in the sense of forms of participation.

The Indictment points out in several places (23 January 1946 a. m.) that Fritzsche had been called to account by this Court because of aiding and abetting. He is characterized as an accomplice of Goebbels; he is said to have assisted in producing propaganda material, helped create an atmosphere of hatred, lent support, *et cetera;* whereby it becomes obvious that he could not have been one of those who did the planning. On the other hand, it is also said of this defendant that he was an active instigator and inciter and that, therefore, he stirred up and aroused people's passions. The first question now is: Does the accessory also belong to the participators within the meaning of Article 6 of the Charter? This question, it seems to me, has not yet been discussed by Dr. Stahmer; but the case of Defendant Fritzsche offers an opportunity for this because by the Prosecution themselves he has been characterized only as an accomplice. I am, therefore, compelled to give the question closer scrutiny.

The four concepts, leader, organizer, instigator, and participator, are presented as being equally important. Perpetrators coming within these four possibilities are also to be dealt with equally. These four concepts, insofar as they differ textually, can consequently only explain in what different forms a plot can be fashioned. One person instigates, the other organizes, another leads the gang, still another takes part in the plot in some other way. Therefore, all four concepts are closely connected with the common plan. They are united only because of the common plan. Only that makes them true accomplices. To make plans jointly, to want jointly to carry something out, that is the primary concept ruling these four secondary concepts. Only the functions in themselves may, of course, be different. They can also be divided by the conspirators themselves. If the conspirators have jointly invented the plan, have formulated it or, by agreement, have merely furthered it, then it should be of no consequence which part each one of them plays in its execution. It should, therefore, also be basically unimportant whether within this plot someone is the leader, the inspirer, or merely another participant in the plan. But, everyone presumably must be a party to the plan. At least, he must have recognized its purpose, for according to the words of the Charter, he must have participated in it, and that either (a) in the formulation, or (b) in the execution—but only of a common plan—or (c) in some other conspiracy for the commitment of an individual crime. Only then is he responsible for others when in the execution of such a common plan someone commits a crime. The word "accomplice" refers therefore to the plan. He is an accomplice in the plan, and is in no respect different from the leader or instigator. A wider

meaning in an accessory sense must therefore be not far removed from this concept.

In common law, the concept of accomplice as a guiding principle has also an altogether different meaning than accessory. By accessory, according to the prescriptive legal conception, only one of the forms of complicity is understood, and that is the form by which a deed by another person is only supported or furthered, a deed which the accessory does not exactly want to be his own; it means the mere support of the main deed. Article 6, last paragraph of the Charter, cannot have such a meaning. There the participant is to be put on an equal basis with the accomplice, whereas in common law the accessory, as subordinate participant, can never be accomplice in a punishable deed. In common law the assistants are merely accessories. It cannot have been the intention of the creators of the Charter to regard the mere accessory as participant in the plan; for whoever participates in a plan is to answer fully for the deeds of others, even if he has only subordinately participated in the formation of the plan. But if the opposite is true, then it must follow that whoever does not participate at all in the formation or discussion of a common plan can therefore not be charged with full responsibility for what others have done. It is thereby immaterial whether the others committed a crime in the execution of a plan or only incidentally upon the occasion of its execution. The responsibility of the one for the deeds of the other can only exist when the plan binds them together. It is for this reason that the concept of conspiracy presupposes of necessity the idea that what is being done takes place under the impulse of a common will and a common knowledge in relation to the plan.

This description of participation as restricted to the plan is, in my opinion, expressed also in other parts of the Charter. In Paragraph 1—and not only in Paragraph 6, Section 1—it is stated that in execution of the Four Power Agreement of 8 August 1945, at first the "principal war criminals," the "principal culprits," the "principal conspirators," should be called to account here before this Court. Assistants, accomplices, simple agents of execution, and all other merely dependent, accessory perpetrators who do not belong to the central body—that is to say, who are not connected with the conspiracy plan or in closer agreement for the carrying out of a single crime—cannot be considered as belonging to such a group. Within the meaning of conspiracy and the responsibility of the one for the other connected with it, there can be no simple "helpers" at all.

As concerns the Defendant Fritzsche, I have demonstrated that—if only due to his position in the State and the Party structure—he can neither belong to the restricted group of conspirators nor to the wider group of the organizations. Moreover, Captain Sprecher

has himself pointed out (Session of 23 January 1946) that Fritzsche is not represented by the Prosecution as the type of conspirator who would have thought out the all-comprehensive strategy, that his particular field lay even outside the framing of the plan; but that it was not necessary for him to have correctly understood the basic strategy—to have perceived the aim when he was the spokesman of the conspirators. I believe that this conclusion, if the concept of "participator" within the meaning of the conspiracy is rightly estimated, contains an error of thought. He of whom it is said that he even stood outside those who made the plan definitely does not belong to the group of conspirators.

After these legal arguments, which are even supported by the opinion of the Prosecution, I come now to this conclusion: The Defendant Fritzsche, against whom it has not been proved here that he took part in any common planning, can on this account not have been a participator in the alleged conspiracy. At any rate, he cannot be punished according to Article 6, last paragraph of the Charter. According to the underlying conceptions of the Charter there should be somewhere a limit fixed concerning the indictment of an individual person in these trials. When is someone still an accomplice, and when is he no longer that but only a tool or accessory? Where is this boundary through which the responsibility for one's own deeds can be separated from the responsibility for what others have done? Because there must be a dividing line for this collective responsibility also. I think the common plan constitutes this dividing line. He who does not belong to those who do the planning must also be left out of the group of conspirators.

On the other hand, the framers of the Charter provided for the possibility (a) of pronouncing an individual culprit a criminal even though he does not belong to the group of conspirators, and (b) of declaring an organization as such a criminal organization.

If the Defendant Fritzsche does not belong to the group of conspirators and, as is definitely established, was never a member of even one of the organizations being prosecuted here, he could be convicted only if he as an individual had committed crimes as covered by Article 6, Paragraph 2(a) to (c) of the Charter. In that case, however, just as in any ordinary criminal procedure, the Prosecution must furnish proof of a criminal offense. If he does not belong to the conspiracy, if he does not belong to an organization, the Prosecution cannot rely on a so-called legal assumption, an assumption which is supposed to result from the mere membership in an organization. It is not possible to reverse the evidential proof. The second question then is: Did Fritzsche, as an accomplice or abettor, belong to the class of those criminals of whom it has been proven that they as individuals committed crimes against peace, violations of law governing warfare, or crimes against humanity?

He as an individual is not charged with committing any one of these crimes with his own hands. The charge is directed against him only by reason of his activity as an accessory.

As far as I can see, the concept of the accessorial accomplice is not foreign to English and American criminal law.* However, common law is governed by the principle that the accessory falls into the same class as the accomplice, in other words, that, irrespective of the measure of his personal culpability, he should be punished, in principle, just like the perpetrator. It seems that at all times English law was inclined to apply the principle of equal punishment for perpetrator and accessorial accomplice.**

The reason for referring here to English common law is merely in order to establish a link with the German concept of law. It is, therefore, sufficient to establish at present that English and American law also differentiate between the concept of a perpetrator and that of a mere accessorial accomplice. On that point, therefore, a decisive difficulty arises, resulting from the fact that there is a difference in the concept of right and wrong between the Prosecution and the defendants. The concepts are bound to be different because their statute law is not the same. That is the reason why I cannot as yet conclude my legal argumentation. Differences in conceptions, although familiar to both legal spheres, result in entirely different legal inferences as far as statute law is concerned.

The British chief prosecutor (Session of 4 December 1945 a.m.) referred to the individual responsibility of each single defendant according to the meaning of Article 6, Section 2(a) to (c) of the Charter. In that connection he remarked that it is a commonplace in common law that persons who help a criminal and shield him, who give advice and help to a criminal, are criminals themselves. By stating this he possibly represented the view that, according to the spirit of the development of English law, such persons, by reason of their complicity in someone else's deed, must be punished in the same manner as the main perpetrator—that is, the accessorial quality of the accomplice, if I understood Sir Hartley Shawcross correctly, is in principle of no importance even with respect to

* Chronological differentiation: Accessories before the fact, principals, accessories after the fact. A differentiation of principals is also made according to the degree of the matter, dividing them into matter of first degree and of second degree; the latter are also segregated into those who assisted in execution itself through advice (abetting) or those who lent aid during commission of the deed (aiding).

** Mention should be made that an English law (act of 1861), for example, makes a differentiation between accessories and abettors, abandoning—even though merely as a matter of choice—infliction of equal punishment in the case of different types of crimes, so that in the case of felonies equal punishment may be inflicted: "may be punished" ... In case of misdemeanors, it is true, equal punishment must be imposed: "shall be liable to be punished."

common law. In practice this might mean that a legal distinction between accomplices and accessories plays no part here, or at best might determine the degree of the respective responsibility for the measure of the individual guilt. Is the one who merely supports the deed of someone else to be judged, in principle, in exactly the same way as the one who wants the deed to be carried out as his own? I may refer to the effects which such an interpretation could have on the measure of punishment for example.

At this point it might be in order to say this: the legal maxim propounded by Sir Hartley Shawcross may indeed be commonplace for every adherent to the English and American law, but this does not hold true for a German defendant. As I also infer from the argument of the French prosecutor, Dubost, this does not seem to hold true for French common law, either, because he pointed out that, according to the principle of penal law, strictly speaking, none of the defendants could in that case be considered as main perpetrators but merely as accomplices. And because the confines of common law concepts are too narrow, it is the opinion of the French Prosecution that the deeds which are to be adjudicated here are not equal to common law with its rationalistic statics, that it would be necessary to apply a law which goes beyond this (Session of 1 February 1946 a.m.). The concept of conspiracy, therefore—the science of the plot (Komplottlehre)—and the possibility to declare an organization criminal, are to be the vehicle by means of which it will be possible to go beyond common law.

However, how about the case of a defendant who does not belong to the conspiracy nor to an organization? After all, law is to be applied! This then leaves nothing but common law for judging the individual deed. Which law is otherwise to be applied for such general concepts as for instance, guilt, intent, negligence, but also for the accessorial quality of the accomplice? It is possible that through the establishment of new facts, the Charter created new substantive law. But what is the juridical concept with which to approach these new facts? The classification of the actual circumstances of a case will probably have to be made only by means of the analogy of penal law concepts. With regard to the facts of the case listed in Articles 6(b) and (c) of the Charter, these correspond essentially with the facts of a case in common law. A defendant as an individual who did not take part in drawing up the plan, and who did not belong to an organization, can then be judged only according to principles which also must apply for every other delict of common law. If concepts such as, for instance, an accomplice who acted as an accessory are involved, argumentation against a defendant can take place according to common law only.

German legal ethics have had to face the most complicated legal problems, particularly in connection with the doctrine of the forms

of participation; in other words, with the question as to how an accessory should be classified according to the various possibilities of participation. From this in particular results the decisive question: Is it possible that the Charter went so far—I repeat, what is involved are common law concepts—as to prohibit taking into account the deep-rooted legal concept of those accused here in judging an accomplice who acted as an accessory? Is it possible that it entirely ignored even the completely different structure of statute law?

In view of the utterly different nature of statute law, especially with reference to the question of accessorial assistance, I ask permission to make a few remarks on the legal dogmatic conception of German law. In all fairness, and at least as far as the concept of an accessorial accomplice is concerned, a German defendant can be charged only with what is known to the concept of law adopted by his people and which, at the same time, is in keeping, morally, with his sphere of knowledge. That is the decisive point!

By reason of the provisions of statute law in Paragraph 49 of the Reich Penal Code, there is not only a strict separation between the accomplice and the perpetrator, as far as the concept is concerned, but necessarily, and as a matter of principle, he is also to be punished less severely than the perpetrator himself. Jurisprudence and the administration of justice, therefore, have made a sharp distinction between the perpetration of an act itself and the mere abetting or support of somebody else's act by the accomplice. This distinction is made not only in accordance with external characteristics, objective factors, but also with regard to what occurs in the mind, and thus with subjective factors. During decades of German administration of justice, particularly that of the Reich Supreme Court, this is expressed in such a way that, in the case of assistance in somebody else's action, the accessory is said to have the *animus socii,* but the perpetrator himself the *animus auctoris.* According to German law the assistance seen from the exterior—that is, according to objective factors—is only a furtherance and support of the action of the principal perpetrator; the accessory must have helped to bring about success by his support.* If he has not helped to bring about this success, then he is not an accessory—then his action is not punishable.

Concerning the mental side of the deed, the intent, the will of the accessory *animus socii* must be directed to the end that somebody else's action is supported with his knowledge. And so when judging what is going on within the mind of a perpetrator, German

* Reich Court 56, 168: "A condition for the action of another person must be established objectively."

law also makes a sharp distinction between will and knowledge. * And this discrimination is furthermore decisive as to whether somebody has given assistance at all.

I have stated before what Fritzsche could have known about plans or their execution from his duties. Only if it has been proved that he had a definite knowledge and will as an accessory to the plans, could he be convicted. It would also have to be investigated in the case of the Defendant Fritzsche whether what he knew and wanted in connection with an alleged furtherance is identical with what someone, as a principal perpetrator of a crime, then actually did. Only when the knowledge and intent of both agree, can there be question of an accessory at all. In this connection, it is to be emphasized that a vague knowledge, a very general intent, is not sufficient to establish the state of being an accessory. The accomplice must be concretely aware of the elements of a plan which another is to carry out in accordance with his intention.**

The Prosecution, however, also charge Fritzsche in various points with instigating specific crimes as an accessory. And so the third question is: Has Fritzsche been the instigator of any single crime?

At the beginning of these legal statements, I already referred to the details of Captain Sprecher's prosecution speech (Session of 23 January 1946). To me it is doubtful if here the concept of instigation is meant in the legal-dogmatic sense of common law. The concept of incitement is used essentially to the extent that it corresponds to the German legal concept of mere invitation (Aufforderung). This charge of instigation can only be raised insofar as it can be said to concern the individual responsibility of Fritzsche for a specific crime mentioned in Article 6, Paragraph 2(a) to (c). The assumption that Fritzsche was a possible instigator to a common

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* If I am not mistaken, this corresponds roughly to the distinction between the act of intent (vicious will) and the ability to distinguish between good and evil (some blameworthy condition of mind) of English legal theory.

** These legal principles have been developed on the basis of Paragraph 49 of the Reich Penal Code in many decisions of the High Court of Justice of the Reich; the reproduction of at least one of these decisions seems appropriate to explain the German legal theory. As early as in its decision of 7-10-1890 (RG. 21, 95) the High Court of Justice of the Reich formulated the question as follows: "Because the substance of being punishable as an accessory lies in knowingly furnishing help in the commission of the perpetrator's offense, it does not only presuppose that the accomplice must have had knowledge of all the essential characteristics of the deed to be committed, but also that his will, his intent, was directed toward supporting and furthering the execution of this specific, concrete deed of the perpetrator by his assistance. The deed that was actually committed or intended must coincide to this extent with that which was knowingly supported by the accomplice in all essential characteristics. If this agreement is lacking, especially should the perpetrator use the assistance given him for the execution of another deed or for a more serious deed which for special reasons remained unknown to the accomplice, this cannot be ascribed to the accomplice. His criminal responsibility extends only as far as his intention to furnish assistance goes and finds fulfillment." Compare to this also the decisions in RG. 15, 316; RG. 37, 323; RG. 56, 350.

plan within the group of conspirators cannot be substantiated, in any case, in accordance with what I have already explained earlier. Instigation as an accessory form of participation in the general legal sense presupposes, however, contrary to the case of an accomplice in which a criminal will is only to be supported or maintained, that such a will must first of all be produced in the perpetrator. The psychological influence does not consist in affirming or strengthening the intention of the individual who has already decided to carry out the deed, as in the case of the accomplice, but in first producing or creating the will for the deed.*

The means for this can be of the utmost variety, but the perpetrator must be brought to change his ideas in that direction.**

Assistance and instigation as accessorial forms of participation correspond to one another, in that also in the case of instigation a conscious and causative connection, also willed by the instigator, must exist between his instigation and the decision of the perpetrator. The principle of equivalence is valid just as in the case of assistance. The perpetration of a deed must correspond with the conception and the will of the instigator. The instigator is therefore only responsible to the extent of his intention. A possible *excessus mandati* cannot be attributed to him. From this stems the accessoriness not only of assistance but also of instigation.

The evidence has not furnished the slightest proof in the Fritzsche case that he has committed an individual crime as instigator through his transmission of news; there is not the slightest evidence to show that he has instigated a single person to murder, cruelties, deportations, killing of hostages, massacre of Jews, or other crimes mentioned in the Charter, or had, as instigator, caused a single crime by his speeches to the public. Not a single passage from his nearly 1,000 wireless speeches could be produced from which such individual responsibility could be deduced. That was not possible with public speeches, anyway. The crimes which were committed were carried out by people completely indifferent to Fritzsche's propaganda. They received their impulses or instructions from altogether different sources. Were not these deeds to be kept secret? The official news service was to avoid handling this as much as possible. As this Trial has shown in a particularly impressive manner, the perpetrators took the greatest pains to limit the knowledge of, for example, the annihilation of the Jews to a very

* Compare "accessory before the fact" with the two possibilities, that of the "instigator" who first produces the decision, or that of the "abettor" who gives intellectual assistance before the execution.

** From a decision of the Supreme Court (Reichsgericht) in RG. 36, 404: "An attempt at instigation presupposes that the person to be incited is not already determined to commit a criminal act of his own accord or under the influence of others." Compare with this also RG. 26, 362.

small circle. What was self-evident with every other state constitution—namely, that occurrences throughout the country should be handled through the press—was not permissible in our dictatorship. The people were not to be asked whether they approved such occurrences. The crimes, established by this Trial, were not to be given any publicity. Can one assume that under such circumstances the press and the radio were suitable means to instigate the perpetration of crimes? Is it not more probable that such occurrences were specially kept secret from the press and the radio? For not a single case—even though the speeches of Fritzsche may have had a marked tendency—can it be said that he, through public speeches of all things, could have instigated a single individual to commit punishable deeds.

Possibly the juridical indications of the Prosecution do not go so far. The Prosecution will then reproach Fritzsche for his contributing to an "atmosphere of hate" (Session of 23 January 1946). Only through such propaganda was it at all possible for gruesome crimes as these to be committed in Germany. This reproach, however, is legally irrelevant. This charge would have legal importance only if the Defendant Fritzsche had been among the group of so-called conspirators, if he had been the instigator of a common plan. I believe I have proved that this absolutely does not hold true. If he had actually created an "atmosphere of hate," this would not, outside of the group of conspirators, have enabled him from a legal point of view to instigate anyone to commit certain crimes. Furthermore, according to the provisions of the German penal law, exhortations disseminated by radio would even exclude the fact of an instigation in a criminal sense. According to German jurisdiction, as practiced for decades, an instigation would legally be impossible because the influence exerted could not have been centered on a certain individual. Furthermore, German law concerns itself merely with instigation to commit a concrete deed and not with an instigation to commit punishable actions in general.* In principle, therefore, any sort of exhortation directed toward a group of persons individually undefined, does not constitute an accessory instigation; it is rather outside the framework of legal relevancy altogether.

It is quite self-evident, however, that Fritzsche's radio addresses were perforce directed to an entirely unlimited number of persons.

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* Compare "Decision of Reichsgericht (German Supreme Court) in RG. (Reichsgesetzblatt, Reich Law Gazette) 34, 328: "It is not sufficient to influence someone along the line of criminal thinking, or of direction of will per se, to justify the assumption of punishable instigation. It is adopted practice, therefore, that the concept of instigation does not exist as long as it involves persuasion of another person to commit criminal deeds in general—even though of a defined category—unless evidence is established that commission of the recent punishable action which actually occurred was in that person's intent who originated the general summons. Also compare RG. 26, 362.

Inasmuch as he was seriously striving to find for the German press and radio propaganda a "foundation based on truth," could he have had the intention at all to instigate to criminal actions? My client admitted in an impressive and unequivocal manner that he followed the tendency of the official German policy in his news reports and comments. In other words, he did not take advantage of the fact that international law did not place him under any restraint, and nothing in the evidence submitted has refuted his good faith. However, in the light of the law, when it is concerned with incitement to complicity, or with assistance given as an accomplice, good faith is equivalent to lack of will and lack of purposefulness.

This establishes: 1) That the Defendant Fritzsche did not belong to the scheming group of conspirators; 2) that he was never, at any time, a member of a group or an organization which is to be declared criminal here; 3) that for factual and for legal reasons, he is not personally guilty of a war crime or a crime against humanity, neither as an accomplice nor—according to the law—as an instigator, and not even—also according to the law—as an assistant.

And so, I believe I have sufficiently discussed the question of evidence and the legal conclusions to be drawn therefrom.

It is necessary, though, to mention one other thing. The Fritzsche case also has its human aspect. Apart from the pros and cons of the legal potentialities, another obvious question must not be left unanswered: Can it be directly attributed to Fritzsche, as a human being, that he had knowledge of or was co-originator of all the horrors which came to light in this Court?

In the sense of the Indictment, he is an *instrumentum dolosum* in the hands of the conspirators—of whom Goebbels was perhaps one—who had knowledge of their aims and purposes. Fritzsche's measures and utterances, however, were not dictated by criminal will. During his examination before this High Tribunal, Fritzsche never put forward the argument of superior orders. But he added that as far as his own person is concerned he was never expected to do anything criminal. And he furthermore declared: No one was obliged to feel compelled to carry out a criminal order. Undoubtedly, Fritzsche sacrificed his own convictions and made many a compromise. This, however, he did not do where he thought he discovered injustice, violence, and inhumanity. As is fitting to a journalist, he examined with care whatever reports reached him from abroad. Despite personal danger such as beset those who would penetrate the veil of secrecy, he followed the news which came from within Germany itself. He did not permit himself to be put off with paltry, vague explanations. He reported many details. I merely refer to his visits to Glücks, Heydrich, and his investigations in the Ukraine.

Wherever he learned about criminal plans, such as the Commissar Order and the inhuman plan to revenge the air bombardments on Dresden, he opposed them with determination, in the latter case even with the help of a foreign ambassador. And he was successful, too, as these two conspicuous examples show. He did this because he followed the voice of his conscience. He did not first engage in lengthy deliberations as to the pros and cons. With regard to the Commissar Order he merely had heard of it as a soldier—he had never read it, nor did he know whether it actually was carried into practice at any time—and he at once raised a protest. When Goebbels ordered him to announce a mass murder of Allied fliers, he did not mind incurring the anger and the fury of his Minister. Dr. Scharping described this in detail (Document Number Fritzsche-3). When he learned of cruelties in the concentration camp at Oranienburg, he protested. The culprits were punished at that time. Dr. Scharping's affidavits (Document Number Fritzsche-2) which I submitted, and others, prove his implicit willingness to assist those who were persecuted, for political or racial reasons, when they appealed to him. Significant of his tolerance is the fact that he made possible the continued publication of the *Frankfurter Zeitung* (Document Number Fritzsche-5). Other proofs along that line, which are also submitted with my Document Book 2, are not negligible, and in the very case of Fritzsche certainly cannot simply be passed over with the comment that he cold-bloodedly handed men over to their death (Prosecution Address of 23 January 1946). He was not willing to sacrifice his dignity as a human being to false idealism, nor for the sake of an oath he had taken.

While the Prosecution have tried to darken the picture, I can point to brighter spots—namely, those which picture him as the representative of propaganda.

Was he a liar—perhaps a notorious liar? That Goebbels was one became clear by the revelations of this Trial. And as it was wrongly assumed that Fritzsche was his right-hand man, the implication was, of course, that Fritzsche had the same attributes. This assumption should now clearly be refuted. It is my conviction that, had not Goebbels evaded his responsibility by seeking a way out through death, we should not see Fritzsche in the dock here as representative of the Propaganda Ministry. The further assumption that all collaborators of Goebbels must wittingly have made use of lies, too, is unjustified. It would only be justified if it had been established here that Fritzsche was in a position to grasp all the real and deep-lying connection and causalities. But only this Trial made that possible. Fritzsche remained entangled in error like millions of other Germans. Glaring abuses were to be seen everywhere. Fritzsche was not unaware of them. Indeed, he has declined

to be characterized before this Tribunal as an opponent of Nazism. He does, however, claim for himself to have opposed abuses insofar as he could recognize them. This entitles him to be put on a higher moral plane.

Neither was he a zealot or a fanatic, obsessed by one idea or by the adoration of power and success, and inaccessible to criticism. Of course, it was a sin, indeed the grievous sin against the spirit, to have continued to serve the system. The decisive point is, however, whether he was in a position to detect more than mere abuses. Falsehood was already built into the foundation, and anything built upon that was bound to be deceitful. It was not only the "thousand-door ministry," as it was once called, that was poisoned. The real reason why everything in Germany was poisoned by falsehood could best be detected by those who lived in a purer atmosphere.

Fritzsche did not keep immune from the phraseology; but he used it perhaps with better taste than many others. He was in a position to state here—and this is no mere empty phrase—that he has always acted fairly and honorably in every respect in his professional work. Dr. Scharping, too, has emphasized this in his affidavit. Is this not an indication that he really did not detect that the whole foundation upon which his work was built up was hollow and deceitful? Had he been a professional liar, he would not have been interested in doing clean, honest work, in checking foreign reports, and in all that which induced him to find a truthful basis for the press and radio.

The Prosecution have laid stress upon his rise in the Propaganda Ministry. Did they mean to imply thereby that he was particularly qualified as a liar? Actually, his career—however modest it was, compared to that of Hitler's other vassals—has quite a different foundation as has also been clearly determined here. He got ahead only because he was qualified as a journalist, as an expert, not because he was particularly good at lying, but because he had a better command of speech than many others.

As proved by the affidavits of Dr. Scharping and Frau Krüger (Document Number Fritzsche-8) Fritzsche lived on a modest scale. During his activity in the Propaganda Ministry he gathered no riches, possessed no luxurious dwelling; nor would he have accepted any presents. The Prosecution, moreover, made no claims to the contrary. It therefore does not appear astonishing that those who had not only heard his voice on the radio but also knew him personally should have emphasized his humane qualities. Dr. Scharping declares in his affidavit, "it was considered a distinction to be allowed to work with him." Is it in keeping with human experience that a man who lies could have won such respect? I believe human esteem can only be won by an honest character. Those who are

in daily intercourse with a person can find out whether he is a liar or not. And if his speech does not betray him, then his eyes will.

There may be many possibilities to clarify the contradiction that somebody who has co-operated in the propaganda of the Third Reich is nevertheless honest and a lover of truth. The most immediate explanation is probably that which can well be taken from Fritzsche's own remark, which I repeat here: He said he felt—and this may well be significant for the verdict if not for history—that he, too, was deceived by Hitler. Before this Tribunal Fritzsche has not only defended himself but the German people as well. To what extent he himself is responsible to the German people for the fact that he, again and again, and till the end, urged them to see the war through, is not a matter to be decided here. Even though Fritzsche may not, like others, have realized at an earlier date that he was serving an evil cause, or although he may not have divorced himself from the state leadership because he wanted to share the cup of bitterness with the German nation to the last dregs, he is not guilty in the sense of the Indictment brought against him before this Tribunal. I ask for his acquittal.

THE PRESIDENT: The Tribunal will adjourn until 2 o'clock.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

MARSHAL: May it please the Tribunal, the Defendants Streicher and Raeder are absent.

THE PRESIDENT: The following is the order of the procedure to be followed in the cases against the organizations:

Paragraph 1: The Tribunal draws the attention of counsel for the organizations to the order of July 1st, which directed that any of the evidence taken on commission which counsel for the Defense or the Prosecution wish to use should be offered in evidence and thus become part of the record, subject to any objections. It will be convenient to the Tribunal, if it is desired, to offer the whole of the evidence at the outset of the proceedings.

Paragraph 2: The counsel for the Defense will then put in their document books, subject to any objections.

Paragraph 3: The witnesses for the Defense will then be called and examined by defense counsel who will bring out the matters they regard as important, given in evidence before the Commission, and any new relevant matters. Each organization will be dealt with in turn, and the whole of the evidence for that organization, both examination and cross-examination, heard before dealing with the next organization.

Paragraph 4: Counsel for each organization will then make his closing speech, dealing with the evidence given before the Tribunal, and making the necessary references to the documents introduced in evidence. He will also draw the attention of the Tribunal to the matters contained in the evidence given before the Commissioners and in the summaries of the affidavits which he deems important and which he wishes the Tribunal specially to consider.

Paragraph 5: The Counsel for the Prosecution will reply when all the speeches of the defense counsels have been made.

Paragraph 6: The Tribunal is of the opinion that the closing speeches of counsel for the Prosecution and Defense ought to be short, not exceeding one-half day in each case. If this time is thought likely to be exceeded, a special application must be made to the Tribunal, stating the grounds for such extension of time, not later than Monday next, July 29th. That is all.

I call on Doctor Seidl for the Defendant Hess.

DR. ALFRED SEIDL (Counsel for Defendant Hess): Mr. President, Honorable Judges. Before beginning with the final plea for the Defendant Hess, I beg permission of the Tribunal to represent the defense counsel for Defendant Göring and submit on his behalf two exhibits. Both have been allowed by the Tribunal, and they refer to the Katyn case, that is to say, the question of

the murder of 11,000 Polish officers in the neighborhood of Smolensk. The first is Exhibit Number Göring-60, an extract from the German White Book, referring to the report on the post-mortem examination conducted by the Bulgarian Professor Borotin. The second is Exhibit Number Göring-61, which is also an extract from the German White Book, and refers to the Katyn case. It is the report of the International Medical Commission of 30 April 1943.

Mr. President, Honorable Judges: When the German people, having lost the first World War, set out in 1919 to rebuild their public life on democratic principles, they found themselves facing difficulties which were caused not merely by the war itself and the material loss resulting therefrom. The Defendant Rudolf Hess was among the first comrades-in-arms of Adolf Hitler and belonged to those who time and again reminded the German people of the great dangers which would of necessity arise for Germany's domestic economy and for world economy as the result of the reparations policy of the victor states of 1919. The consequences of that policy were bound to be all the more devastating for Germany when in 1923 France proceeded to effect the military occupation of the Ruhr territory, the center of Germany's economic power. At that time of economic collapse and complete disarmament of Germany, Adolf Hitler made the first attempt on 9 November 1923 to seize the power of the state by revolution. The Defendant Rudolf Hess also took part in the march to the Feldherrnhalle in Munich. Together with Adolf Hitler, after having been convicted by the People's Court, he underwent imprisonment at Landsberg Fortress, where Hitler wrote his book *Mein Kampf*.

When in 1925 the Party was established again, Rudolf Hess was one of the first to resume with Adolf Hitler the struggle for a national rebirth of the German people. During the first years after its rebirth the Party began its slow ascent. Germany's domestic economy had recovered from the worst effects of the Ruhr invasion. The currency had been stabilized and owing to very extensive foreign credits it had even been possible to bring about an economic boom.

Very soon, however, it was revealed that the economic progress of the years 1927-29 in reality was but an illusory prosperity for which in Germany, at any rate, there was no foundation in a sound and well-balanced national economy. It is true that the economic crisis which began in 1930 was a general crisis in world economy and that the decline which Germany experienced at that time was but a part of the general disintegration in world economy. It is just as certain, however, that it was not a question here simply of a seasonal decline within the capitalist economy—such as had been experienced repeatedly by individual commercial economies of states and by world economy—but a case, in this instance, of structural

changes owing to different causes, one of the most important of which, however, undoubtedly was the disruption in the exchange of products and legal tender caused by the unreasonable reparations policy.

It is just as certain that the consequences of the crisis in world economy were devastating in Germany, 7 million having been thrown out of work, because the changes brought about in the national economy as a result of reparations payments were far-reaching. If, however, the National Socialist German Workers' Party won a major electoral victory in the Reichstag elections of 14 September 1930 and entered the new Reichstag with no less than 107 delegates, it is to be attributed to the economic crisis then prevailing, to the great unemployment, and indirectly to the economic absurdity of the reparation payments and the refusal of the victorious states to consent to a new arrangement despite the most urgent warnings. True, the reparation payments stipulated in the Treaty of Versailles and the mode of settlement were amended by the Dawes and Young Plans. It is, however, just as true that these amendments came too late and demands were continued for payments from Germany to an extent and under conditions which were bound to, and did in fact, lead to an economic catastrophe. In this connection I must point to the following fact: the Prosecution have produced an extensive amount of documentary evidence in reference to the rise of the NSDAP until its seizure of power. A comparison of the Reichstag representatives in the years from 1930 to 1932 with the unemployment figures for the same period would disclose that these figures ran parallel. The more hopeless the social consequences of unemployment became—and in 1932 no less than 25 million people including family members may be estimated to have been affected by the consequences of unemployment—the more impressive became the electoral successes of the National Socialists. I hardly think there could be a more convincing proof of the existence of a causal relation between the consequences of the reparation policy of the victorious powers of 1919 and the rise of National Socialism. The causal relation may be summed up in a short formula: No Versailles Treaty, no reparations—no reparations, no economic collapse with its particularly catastrophic effects upon Germany, which found expression in an unemployment figure of nearly 7 millions—and without this collapse, no seizure of power by the National Socialists. The political and historical responsibility of the authoritative foreign statesmen resulting from this causal connection is so crystal-clear that further demonstrations of it are superfluous in the framework of this Trial.

This formula may appear too pointed and it may furthermore be true that it was not the economic emergency and the high unemployment figure alone which induced millions of Germans to vote

National Socialist on 14 September 1930 for the first time and which led to the subsequent progress of the Party's rise to power. Nevertheless, these causes were assuredly among the foremost, and even the other causes which played a part in the decision of many voters can finally be traced back to the fatal effects of the Treaty of Versailles and refusal of the victorious powers, especially France, to consent to a revision of the treaty. This applies in the first place to the claim for equality of rights raised by all subsequent democratic governments.

When the German nation had disarmed in fulfillment of the Versailles Treaty, it was entitled to expect the victorious powers to disarm also, in accordance with the obligation assumed by them in the treaty. This was not carried out and there can be no doubt that their denial of the equality of rights as evidenced by their refusal to disarm themselves figures among the most decisive causes of the rise of National Socialism in the years 1931 and 1932. And if any of Hitler's arguments ever found a response in the German nation, it was that equality of rights could not be denied in the course of time, even after a lost war, to a nation like the German nation, with a population of over 75 millions, situated in the heart of Europe and with a cultural past of which few other nations can boast. It has already been remarked in this courtroom that a nation which has produced a Luther, a Goethe, and a Beethoven cannot be indefinitely treated as a minor nation.

Again and again Hitler had occasion to remark upon the fact that the statesmen of the Weimar Republic left no method untried to arrive at a peaceful revision of the more unbearable clauses of the Treaty of Versailles. For 8 years the statesmen of democratic Germany, Stresemann and Brüning, went to Geneva to obtain at last the repeatedly promised equality of rights for Germany and they were repeatedly sent home with empty hands. The dangers produced by this situation could not remain concealed from anyone. In fact, the world was warned by German statesmen, as well as by shrewd politicians of Germany's former enemies. All these warnings were scattered to the winds.

When finally in 1932 the National Socialist Party with 230 seats in the Reichstag had become by far the strongest party in Germany, it could only be a question of time until Hitler and his Party would be entrusted with the taking over of government leadership. In the long run this could be avoided all the less since the previous Governments of Herr Von Papen and General Schleicher had no appreciable following in the Reichstag at their disposal and exercised their governmental authority exclusively by the means of emergency decrees in accordance with Article 48 of the Weimar Reich Constitution. When, on 30 January 1933, Adolf Hitler was actually appointed Reich Chancellor by Reich President Von Hindenburg

and was entrusted with the formation of a new cabinet, this was done altogether according to the clauses of the Reich Constitution.

At the Reichstag election in 1932 the National Socialist Party received more votes than had been received by any party since the beginning of the German Reich. If the leader of this strongest party was entrusted with the formation of the cabinet, this was by no means extraordinary, particularly in view of the parliamentary conditions prevailing in Germany at that time, and there cannot be the slightest doubt that Hitler and his Party came to power legally, that is, according to the Constitution. However, it is correct that in the course of the following years the constitutional structure of the German Reich and particularly Hitler's position underwent a change. There is, however, no evidence on hand that this development as well was not legal. In this respect, in order to avoid repetition I am referring to the statements of the witness Dr. Lammers.

In this case it may be left completely undecided whether one wants to attribute this development to Hitler's absolutely autocratic rule by the creation of a so-called prescriptive state law or whether one avails oneself of another theory. For the scope of this Trial it seems to me much more decisive that not a single nation with which Germany maintained diplomatic relations raised any objections whatsoever or even drew diplomatic or international legal conclusions either at the seizure of power or on the occasion of the transformation of the constitutional structure carried on openly before the entire world. Neither at the seizure of power nor at any later period was the question of diplomatic and international legal recognition of the National Socialist State in doubt.

In addition, may it merely be pointed out that the law, which in the following period was to become of the greatest importance for the relationship between citizen and state, was still issued by Reich President Von Hindenburg pursuant to Article 48 of the Reich Constitution. I have in mind the decrees of the Reich President for the Protection of the People and the State, dated 28 February 1933 *(Reichsgesetzblatt,* Part 1, Page 83). In Paragraph 1 of this decree, the most important basic laws of the Weimar Constitution were voided, and curtailments of personal liberty—the rights of free speech, including freedom of the press; the right to organize and assemble; interference in the privacy of the letters and mails, telegraph and telephone; orders for searching of homes; and confiscations, as well as property restrictions—were declared valid, even beyond the legal limitations otherwise imposed.

From a formal viewpoint there can be just as little doubt about the legal validity of this decree as there can be about any other so-called constitutional or basic state law issued by the Reichstag,

the Reich Cabinet, the Ministerial Council for Reich Defense, or by Hitler himself.

Gentlemen of the Tribunal, on behalf of the Defendant Rudolf Hess I have already stated that he assumes the full responsibility for all laws and decrees which he has signed in his capacity as the Deputy of the Führer, as Reich Minister and member of the Ministerial Council for Reich Defense. Therefore I have refrained from presenting documentary evidence in reference to accusations which, as a sovereign state, merely concern the domestic affairs of the German Reich and have no bearing on the crimes against peace and crimes against the laws of war mentioned by the Prosecution. I shall, therefore, now only touch on such laws and constitutional and political measures which have some recognizable connection with the actual Counts of the Indictment and the Common Plan or Conspiracy asserted by the Prosecution.

The Indictment accuses the Defendant Rudolf Hess of having sponsored the military, economic, and psychological preparations for war and of having participated in the political planning and preparation of wars of aggression. As evidence for this assertion, the Prosecution pointed to the fact that the Defendant Rudolf Hess, in his capacity as Reich Minister without Portfolio, cosigned the law of 16 March 1935 for the reconstruction of the Armed Forces. This law reintroduced general conscription in Germany and stipulated that the German peacetime army was to be divided into 12 corps commands and 36 divisions. For this Trial the proclamation which the Reich Cabinet directed to the German people in connection with the publication of this law and which was placed above the law in the *Reichsgesetzblatt,* appears to me no less important than the contents of this law. I refer to the contents of this proclamation which has been presented as an exhibit. This proclamation of 16 March 1935 contains no essential arguments on this question which had not already previously been brought out by the democratic German governments at the time of the Weimar Republic.

Your Honors, the Tribunal have permitted me to read at least part of my brief in connection with this question. However, in view of the fact that counsel for the Defendant Von Neurath has already referred to this question in detail, I shall merely refer to his argument in this connection and I shall therefore, on my part, forego detailed comment.

The reintroduction of general military service by the law of 16 March 1935 is apparently not considered in the Indictment as a punishable offense in itself, but only as part of the general plan as asserted by the Prosecution, designed to commit crimes against peace, against the laws of war, and against humanity. Whether

such a plan ever existed at all, whether and to what extent the Defendant Rudolf Hess was involved in it and what part the reintroduction of general military service may have played in both an objective and a subjective way in this plan, I shall take up in detail later.

Within the scope of the common plot, of having planned and prepared a war of aggression, the Defendant Rudolf Hess is also accused of having, in his capacity as Deputy of the Führer, set up the Auslands-Organisation of the NSDAP, the League for Germans Abroad, the German Eastern League, the German-American Bund and the German Foreign Institute. The documents submitted by the Prosecution in this connection do not furnish proof to the effect that the Defendant Hess himself issued directives or orders to these organizations, which could have caused them to pursue activities similar to those of a fifth column. The testimony of the witnesses Bohle, Ströhlin, and Alfred Hess has, on the contrary, proved that the Defendant Hess, in particular, clearly forbade these organizations and leaders to interfere with the internal affairs of other countries. The Prosecution have not been able to prove in any way that the afore-named organizations had actually developed activities which were aimed at undermining the structure of foreign states from within.

Under these circumstances it is superfluous to go into the activity of the afore-named organizations in more detail, all the more so since there is nothing at all tending to prove that there was any causal connection between the tasks and functions of these organizations and the events which later led to the outbreak of war in the year 1939.

The Prosecution furthermore tried to prove that Defendant Rudolf Hess also took a decisive part in the occupation of Austria on 12 March 1938. I do not intend to enter into details of the history of the annexation and to consider from the legal point of view the facts which actually led to the annexation of Austria to the German Reich in the year 1938.

There is one point, though, that must be established here: The right of self-determination of nations was a salient factor among the Fourteen Points of President Wilson. It is a fact, however, that of the postulates of the American President none was realized by the Treaties of Versailles and St. Germain to so small an extent as just this right of self-determination. The Tribunal has already been offered in evidence the resolution of the Provisional Austrian National Assembly of 12 November 1918. In this new basic law the following is ordained, inter alia: "German Austria is a democratic republic. All legislative and executive powers are instituted by the people. German Austria is part of the German Republic." The declarations made by the then Social-Democrat Federal Chancellor, Dr. Karl Renner, in justification of this constitutional law are no less definite when he says, among other things:

"Our great nation is beset by misery and distress, the nation which was always proud to be called the nation of poets and thinkers, our German nation of humanism, of mutual love among the nations; it is bowed down with sorrow! Yet in this very hour when it might be easy and convenient,

and perhaps even tempting, to prepare a separate account, and maybe gain advantage from the enemy's trickery—in this very hour let our people everywhere know: We are of one race and share a common fate!"

Contrary to the expressed will of an overwhelming majority of the Austrian population a union of the two German nations was vetoed by the Entente. The victorious powers, by threat of a hunger blockade, prevented a plebiscite on the question of the Anschluss voted for by the Austrian National Assembly on 1 October 1920. Nevertheless some of the provinces carried out such a plebiscite independently, with the result that an overwhelming majority voted for the Anschluss. Indeed nothing could describe the situation better than the following passage in State Secretary Lansing's book, The Peace Negotiations, published in the year 1921: "A more patent denial of the ostensible right of self-determination than this veto against the Anschluss with Germany, willed almost unanimously by the German-Austrian people, can hardly be imagined." This wish of the Austrian people to be united with the German Reich did not only show immediately after the first World War, but remained alive in the times afterward. It is a moot question as to the specific reasons for this trend and what reasons prevailed at one time or another. Certainly there can be no doubt that such a wish did exist, and that the Anschluss would have been realized but for the opposition either of the Entente or of other powers which believed they had thus to defend so-called interests. In this connection reference may be made to the declaration of Federal Chancellor Dr. Renner of 12 November 1928, which has likewise already been submitted by the Defense, which reads inter alia:

Today, 10 years after the 10th of November 1918, and forever, we shall faithfully abide by this resolution and confirm it by our signature.... The Peace of St. Germain has destroyed the right of self-determination of the Germans in Austria.... Let the people of Austria vote freely and 99 percent will vote for the reunion with Germany..." And this is what really happened:

When the German troops marched into Austria on 12 March 1938 they did not come as conquerors but were received by a jubilant population in one triumphal procession.

In order to save time I shall refer to the extensive statement made by counsel for the Codefendant Dr. Seyss-Inquart.

Whatever now concerns the participation of the Defendant Rudolf Hess and the Party in bringing about the annexation, the evidence has only shown that the annexation of Austria was an incident which did not really have anything to do with the National Socialist Party in the Reich as such. It is sufficient to refer in this connection to the testimony of the Defendant Göring and to that of Dr. Seyss-Inquart on the witness stand, which shows that the question of the annexation was solved exclusively by the Reich, that is, by state authority and not by the Party.

If any doubts should still have existed on this point, they were removed by Document Number 812-PS, Exhibit Number USA-61, presented by the Prosecution. It deals in this case with the letter of the Gauleiter of Salzburg, Dr. Friedrich Rainer, to Reich Commissioner Gauleiter Josef Bürckel, in which he states, among other things:

"... Soon after the seizure of power in the Ostmark, Klausner, Globocznik, and I flew to Berlin in order to give a report to the Deputy of the Führer, Party member Rudolf Hess, about the incidents which led to the seizure of power."

A report naturally would not have been required if the Deputy of the Führer and the Party itself had been directly and decisively participating in the solution of the annexation question. I do not mention this in order to give reasons of justification or excuses on behalf of the Defendant Rudolf Hess. The findings are rather made exclusively in the interests of historical truth.

I now come to the question of the Anschluss of the Sudetenland. 3.5 million Sudeten Germans were incorporated into a state with 8.5 million Czechs and Slovaks, without being granted a decisive influence on the state. All attempts of this national group to receive autonomy within the Czechoslovakian state structure remained futile. When the question of annexation with regard to Austria was solved, it was inevitable that the future position of the Sudeten Germans, which after all consisted of 3.5 million persons who undoubtedly belonged to the German nation, would be subjected to a test.

Now, I do not intend to take a detailed legal stand on all questions of the annexation of the Sudetenland to the Reich. In view of the fact, however, that the Prosecution in the trial brief which they presented before the Tribunal against the Defendant Hess treated the Sudeten German question and have also presented several documents as evidence, it appears necessary to take a brief stand concerning them.

Document Number 3258-PS, Exhibit Number GB-262, deals with a speech of the Deputy of the Führer at the meeting of the Auslands-Organisation of the NSDAP on 28 August 1938. The latter in general phrases takes a stand on the Sudeten German question by emphasizing the principle of nationalities and the right of self-determination of the nations. Also the remaining documents presented by the Prosecution, Document Number 3061-PS, Exhibit USA-126, Document Number 388-PS, Exhibit USA-26, do not show on what a decisive participation of the Defendant Rudolf Hess in the solution of the Sudeten German question could be based.

However, the extent of this participation can be completely ignored, as the annexation of the Sudetenland to the Reich cannot in itself constitute facts for a criminal charge according to international law. After all, the annexation of the Sudetengau was not carried out on the basis of a one-sided act of Germany or on the basis of a perhaps disputable agreement between the German Reich and the Czechoslovak Republic. The annexation, rather, took place on the basis of an agreement which had been concluded in Munich on 29 September 1938 between Germany, the United Kingdom of Great Britain, France, and Italy. In this agreement exact and very detailed stipulations were made about the evacuation of the territory to be ceded and the step-by-step occupation

by German troops. The final determination of the frontier was carried out by an international committee.

Without wishing to go into further details, it can still be said with certainty that this is a treaty which had been concluded on the basis of a free agreement and that all those participating expected that it might provide the basis, or at least a considerable prerequisite, for an improvement of international relations in Europe.

I now come to another point of the Indictment. Within the limits of the Indictment as a whole, as well as in the personal accusation raised by the Prosecution against the Defendant Rudolf Hess, the latter is accused of having participated in the outbreak of war and of being responsible for it. The Defendant Rudolf Hess actually did take a stand in several speeches on the question of the Polish Corridor and the problem of the Free State of Danzig. In this case, however, the following must be stated:

By the establishment of the Polish Corridor, not only the right of self-determination of the nations was violated—after all, more than one million Germans came under Polish domination in this manner—but in addition to this, through the partition of the state territory of the German Reich into two areas completely separated from each other, a situation arose which was not only contrary to all economic common sense but which, moreover, was bound to become the cause of constant discord from the very outset. Indeed, from the day of the signing of the Versailles Peace Treaty, the demand for a revision of the treaty, especially in the question of the Polish Corridor, has never been silenced at any hour. There was no party and no government in Germany which did not acknowledge the necessity of a revision of the treaty, primarily in this point. There can be no doubt that if Poland ought to have an independent access to the Baltic Sea under all circumstances, this problem could have been solved much more sensibly than by the establishment of the so-called Corridor and the thereby stipulated partition of the German Reich into two areas which were completely separated from each other.

Something similar applies with regard to the status of the Free State of Danzig on the basis of international law and state sovereignty. It is not necessary to look at the facts more closely in this case, which in the course of time have led to constantly increasing difficulties and which in the end necessitated a change with regard to international law and the state sovereignty of this purely German city.

It is just as unnecessary to go into greater detail with regard to the minority problem which was raised by the Polish Corridor and the establishment of a Free State of Danzig. The fact is that

in the course of two decades, no less than approximately one million Germans were forced to leave their settlement area, and especially under circumstances which could not remain without effect on the general political relations between the German Reich and the Polish Republic. The problems raised here have been publicly discussed even before Adolf Hitler came to power.

Under these circumstances, it could not surprise anyone if after the seizure of power by Adolf Hitler and his Party, the questions raised by the Polish Corridor and the separation of Danzig from the Reich were subject to re-examination. This was all the more unavoidable since after the conclusion of the German-Polish Treaty in the year 1934, Poland's increasing attempts to exclude the German element did not cease.

I do not intend to discuss in further detail the negotiations which were conducted by the German Reich with the Polish Republic, the aim of which was to find a *modus vivendi,* taking into consideration Poland's justified interests. Nevertheless, it appears important to me to keep the following facts in mind, and this seems to be essential for the reason that the Prosecution stated again and again that the defendants, the German Government, should have done everything to clarify those questions and that especially the German Government should have conducted negotiations, and that the one thing that they should not have done was to start a war. The following statements are to show that attempts were made to solve pressing problems by negotiations.

For the first time the Reich Minister for Foreign Affairs, in the course of a conversation with the Polish Ambassador on 24 October 1938, discussed the question raised by the Corridor and the separation of the city of Danzig and suggested a solution which was to be based on the following foundation:

"1. The Free State of Danzig returns to the German Reich.

"2. An extraterritorial Reichsautobahn belonging to Germany and likewise an extraterritorial railroad with several tracks would be constructed across the Corridor.

"3. Poland likewise obtains an extraterritorial road or Autobahn, a railroad, and a free port in the Danzig area.

"4. Poland is guaranteed a market for her goods in the Danzig area.

"5. The two nations recognize their common frontiers or the territories of both sides.

"6. The German-Polish Treaty is to be extended by 10 to 25 years.

"7. Both countries include in their treaty a consultation clause."

The Prosecution themselves submitted to the Tribunal the reply of the Polish Government to this proposal. The document is Document Number TC-73, Number 45, which describes the attitude of the Polish Foreign Minister Beck of 31 October 1938 and his instructions to the Polish Ambassador Lipski in Berlin. In this document the German proposal is flatly turned down on the grounds that "... any attempt to incorporate the Free City of Danzig into the Reich would invariably lead to a conflict, and the resulting difficulties would not merely be of a local nature, but would prevent any possibility of Polish-German understanding in all its aspects."

In fact, such also was the stand taken by the Polish Ambassador during another conversation which he had with the Reich Foreign Minister on 19 November 1938. When asked about the Polish Government's attitude regarding the German proposition of an extraterritorial Reichsautobahn and an extraterritorial railway through the Corridor, the Polish Ambassador declared that he was not able to make an official statement on these questions.

It is impossible to deny that the proposal made by Germany was very restrained and contained nothing incompatible with Polish honor or the vital interests of that state. One should be all the more willing to admit this, as the creation of the Corridor and the separation of East Prussia from the Reich was really felt by the German people to be the heaviest burden of the Versailles Treaty. If, nevertheless, the Polish Government turned this proposal down, for reasons which excluded any prospect of finding a solution in subsequent negotiations, the conclusion could be drawn that already at that time Poland had no sincere wish to enter into an agreement, which would take into consideration Germany's legitimate interests. This impression was confirmed by the negotiations during the visit of the Polish Foreign Minister Beck to Berlin on 5 January 1939, and the return visit by the Reich Foreign Minister to Warsaw on 21 January 1939. When, in spite of this attitude of Poland, the Reich Foreign Minister repeated the proposition made on 24 October 1938 in another meeting with the Polish Ambassador on 21 March 1939, we must conclude that the German Government was sincerely desirous of solving, by means of negotiation, the questions relative to the Corridor and the separation of the city of Danzig. Thus it cannot be seriously denied that the German Government tried to solve the Danzig question and that of the Polish Corridor by negotiation and that it made very moderate proposals in that respect.

The reply to the German proposals of 21 March 1939 was a partial mobilization of the Polish armed forces. The connection between the partial mobilization ordered by the Polish Government and the British proposal for consultation, dated 21 March 1939, need not be discussed, nor whether, incidental to the transmission of this consultation proposal in Warsaw, the declaration of guarantee of

31 March had already been promised or contemplated by the British Government. There can be no doubt, however, that the partial mobilization of the Polish armed forces, as also admitted by the British Prime Minister Chamberlain in a declaration before the House of Commons on 10 July 1939, was not calculated to create favorable prerequisites for further negotiations. As a matter of fact, the subject of the memorandum of the Polish Government given by the Polish Ambassador Lipski on 26 March 1939 was a complete rejection of the German proposal. It was declared that extraterritoriality for the highways was out of the question, and that a reunion of Danzig with the Reich could not be considered. In the conversation between the Reich Foreign Minister and the Polish Ambassador, which followed the transmission of the memorandum, the latter declared quite openly that it was his unpleasant duty to point out that to pursue the German plans further, particularly insofar as they had a bearing on the return of Danzig to the German Reich, would be tantamount to a war with Poland.

The connection between the Polish mobilization of 23 March 1939 and the Polish memorandum of 26 March 1939 containing a complete rejection of the German proposal on the one hand, and the proposed British guarantee-pledge of 31 March 1939 on the other hand, which I said may be left open, appears justified with regard to the proposed "formal declaration" made by the British Government as early as 21 March in Warsaw, as well as in Paris and in Moscow. This "formal declaration" was to announce the opening of immediate discussions on measures of mutual resistance against any attack on the independence of any European state. Furthermore, the speech by Prime Minister Chamberlain on 17 March in Birmingham, and the speech of the British Foreign Minister, Lord Halifax, of 20 March in the House of Lords, reflected a point of view bound to encourage the Polish Government all the more toward stubbornness. As a matter of fact, the proposed step of "a mutual formal declaration" already proposed on 21 March 1939 by the British Government to the Governments in Warsaw, Paris, and Moscow proved to be the opening of lengthy discussions whose purpose it was to place an iron ring around Germany.

It was thus clear from the very outset that, under such conditions, bilateral negotiations between the German and the Polish Governments promised but little success, in any case as long as those discussions lasted. In another memorandum handed to the Polish Foreign Minister on 28 April 1939, already submitted by the Prosecution, the German Government nevertheless once more explained its attitude completely and established once more its readiness for further negotiations. Contents of this memorandum, including proposals made in March 1939, were announced publicly by Adolf Hitler in his speech delivered in the Reichstag on 28 April 1939.

In reply to the memorandum of the German Government of 28 April 1939, the Polish Government transmitted on 5 May 1939 a memorandum which has also been submitted by the Prosecution. That memorandum contained even more emphatically a complete rejection of Germany's proposal for solving the problem of the Corridor and the Danzig question.

Negotiations which began on 21 March 1939 between London, Paris, Warsaw, and Moscow for the purpose of establishing an alliance exclusively directed against Germany, did not proceed as desired. Nor was it possible for the French and British military missions, sent to Moscow on 11 August 1939, to eliminate completely the difficulties arising from evidently far-reaching political differences of opinion. It need not be established how important was the fact that Poland, which was to obtain a guarantee by England, France, and the Soviet Union, obviously refused to accept military assistance from the Soviet Union. It also remains uncertain whether it is correct that the Soviet Foreign Commissar Molotov asserted during the special meeting of the Supreme Soviet on 31 August 1939 that England had not dissipated Poland's apprehensions but, on the contrary, had increased them. It seems more important to examine the fundamental differences of opinion.

I was about to refer here to an extract from the well-known book written by the former British Ambassador in Berlin, Sir Nevile Henderson. In consideration of the fact that the Tribunal do not desire to have this quotation read, I shall merely refer to it.

Meanwhile, the following had actually occurred: At the Eighteenth Congress of the Communist Party on 10 March 1939, the President of the Council of People's Commissars of the USSR, Stalin, made a speech in which he intimated that the Soviet Government considered it possible or desirable to reach a better understanding even with Germany. Hitler understood this hint perfectly well.

Foreign Commissar Molotov expressed himself similarly in his speech before the Supreme Soviet on 31 May 1939. Thereupon, the discussions between the German and the Soviet Governments were followed by the conclusion of a German-Soviet Trade and Credit Agreement. This agreement was signed in Berlin on 19 August 1939. But already during these economic negotiations, questions of general political nature were discussed which, according to the Soviet Russian News Agency Tass on 21 August 1939, made known the desire of both Governments to bring about a change of their policy and to ban war by concluding a nonaggression pact. This nonaggression pact was signed in Moscow on the night of 23 to 24 August 1939—therefore, as shown by the presentation of evidence in this Trial, 2 days before the attack of the German Army against Poland was ordered for the morning of 26 August 1939.

Besides this nonaggression agreement, a "Secret Supplementary Protocol" was signed as an important part of the agreement. On the basis of the presentation of evidence, especially on the basis of the affidavit of Ambassador and Chief of the Legal Department of the Foreign Office, Dr. Friedrich Gaus, on the basis of the testimony of Baron von Weizsäcker, State Secretary in the Foreign Office, and on the basis of the statements of the Defendants Von Ribbentrop and Jodl, the following contents of the Secret Supplementary Protocol can be considered as established: In the case of territorial-political reorganization in the territories belonging to the Baltic States, Finland, Estonia, and Latvia should fall into the sphere of interest of the Soviet Union, whereas the territory of Lithuania should belong to the sphere of interest of Germany. For the territory of Poland, the division of spheres of interest was made so that the territories lying to the east of the rivers Narew, Vistula, and San should fall to the sphere of interest of the Soviet Union, whereas the territories lying to the west of the demarcation line determined by these rivers should belong to the German sphere of interest. In other respects an agreement was reached concerning Poland, that both powers would act on mutual agreement on the final settlement of questions concerning this country. With regard to southeastern Europe, the limits of spheres of interest of both sides were made so that the Soviet side stressed its interest in Bessarabia, whereas the German side disclaimed any interest whatsoever in this territory. According to the testimony of all witnesses, but especially on the basis of the statements by Ambassador Dr. Gaus and State Secretary Von Weizsäcker, it is established that this secret agreement included in it a complete new settlement concerning Poland and the future fate of the Polish State.

The efforts nevertheless to come to an understanding with Poland with regard to the question of Danzig and the Corridor, made after the conclusion of the German-Soviet Non-Aggression Agreement and of the Secret Supplementary Protocol, failed. The Pact of Assistance which was made on 25 August 1939 between Great Britain and Poland did not prevent the outbreak of the war, but simply delayed it for a few days. I have no intention of going into particulars of the diplomatic negotiations which were conducted after the conclusion of the German-Soviet Agreement of 23 August 1939 to reach an agreement. One thing, however, can be said with certainty: If the unilateral guarantee declaration of England of 31 March 1939 meant to influence the already stubborn Polish Government not to accept the German offers, then an assistance pact with Great Britain would tend to dampen Poland's desire to negotiate. The failure of the negotiations which were carried on between Germany and Poland are all the less surprising when one bears in mind the testimony of the witness Dahlerus

before the Tribunal. Has not this witness confirmed that the Polish Ambassador in Berlin, Lipski, declared on 31 August 1939 that he was not interested in discussing the proposals of the German Government? He based this negative attitude on the statement that in case of war a revolution would break out in Germany and the Polish Army would march toward Berlin.

Whatever the news might have been which induced the English Government to conclude the treaty with Poland and which possibly intimated a rift in the German-Italian alliance and symptoms of deterioration in the German State structure—and here I refer to the testimonies of the witnesses Dahlerus and Gisevius—the future was to prove that such ideas were not based on any facts.

When on 1 September 1939 war broke out between Germany and Poland, it was at first a question of a localized conflict between two European states. But when Great Britain and France declared war on Germany on 3 September 1939, this conflict expanded into a European war, into a war which as all modern wars between great powers tended from its very beginning to develop into a world war because of inadequate international organization and the complete collapse of the system of collective security. This war was to bring immeasurable suffering to all humanity, and when on 8 May 1945 the European war ended with Germany's unconditional surrender, it left behind a Europe in ruins. Adolf Hitler did not live to see Germany's collapse and its unconditional surrender. Twenty-two former leaders of the National Socialist Germany stand before the bar of the Tribunal in order to answer charges of having committed crimes against peace, against the rules of warfare, and against humanity in the execution of a common plan.

The so-called London Agreement of 8 August 1945, concluded between the Government of Great Britain and Northern Ireland, the Government of the United States of America, the provisional Government of the French Republic, and the Government of the Union of Soviet Socialist Republics, is the basis of this Trial. The present Tribunal was created pursuant to this agreement, the composition, competence, and tasks of which were established by the Charter of the International Military Tribunal, which is a considerable part of the agreement concluded by the four Governments on 8 August 1945.

The Charter of the International Military Tribunal, however, does not only contain the regulations dealing with composition, competence, and tasks; besides those, it includes—and these are the most important parts of the Charter—the regulations of material-juridical contents. This applies above all to Article 6 which contains the definitions of Crimes against Peace, War Crimes, and Crimes against Humanity, with their characteristic facts.

Paragraph 3 of Article 6 of the Charter, which enumerates the characteristics of the so-called conspiracy in detail, has to be considered above all as the penal facts of the case. Furthermore, Articles 7, 8, and 9 of the Charter are to be considered as material-juridical regulations.

The explanations following were not approved by the Court. They are substantially identical with the declaration made by the Defense at the beginning of the Trial on 21 November, and I beg to refer thereto.

I continue on Page 40 with the last paragraph.

In the Indictment the Defendant Hess is charged with having supported the seizure of power of the so-called Nazi conspirators, the strengthening of their control over Germany, and furthermore the furthering of the military, economic, and psychological preparations for war. He is furthermore charged with having participated in the political planning and preparation of wars of aggression and of wars in violation of international treaties, agreements and assurances, and in the preparation and planning of the foreign political schemes of the so-called Nazi conspirators.

The Prosecution finally asserts that he approved of, directed, and participated in War Crimes and Crimes against Humanity as enumerated in Counts Three and Four of the Indictment respectively.

THE PRESIDENT: This ought to be a convenient time to break off.

[A recess was taken.]

DR. SEIDL: Your Honors: Count One of the Indictment refers to the so-called Common Plan or Conspiracy according to which all the defendants and various other persons are alleged to have participated for a number of years prior to 8 May 1945 in the planning or execution of a common plan as leaders, organizers, instigators, and collaborators. This plan aimed at and brought about the commitment of crimes against peace, of crimes against the laws of warfare and against humanity. It is asserted that the defendants planned, prepared, unleashed and directed wars of aggression, and committed war crimes and crimes against humanity in the execution of this common plan.

While the Charter only knows three specifications of crimes—crimes against peace, against the rules of warfare, and against humanity—the Indictment contains four of them. In the Indictment, the Common Plan or Conspiracy is made an individual and independent count of the charge, without the Charter's establishing sufficient reasons for this. It may be left undecided whether conspiracy is considered a particular type of crime according to Anglo-American law. In view of the fact that the Charter rejects the use of both Anglo-American and continental law, but has established

its own standards of law, and these *sui generis*, only the text and spirit of the Charter itself is decisive.

According, however, to what is expressly stated in Article 6, Paragraph 3 of the Charter, regarding the drafting or the execution of a plan for the perpetration of a crime against peace, against the customs of war, or against humanity, there surely cannot be an independent state of criminality as stated in Count One of the Indictment under the heading of Common Plan or Conspiracy, in all events, not on the basis of the provisions of the Charter.

Since the Defendant Hess has been charged with all four Counts of the Indictment it is necessary first to answer Count One of the Indictment: The Indictment places at the center of the Common Plan or Conspiracy the National Socialist German Workers' Party of which Adolf Hitler had become the leader in 1921, and which the Defendant Rudolf Hess also joined as early as 1921. Even the Indictment does not, apparently, claim that the Party program of the NSDAP was actually criminal in itself. It appears all the less necessary to probe further into this question, as in the subsequent routine of political life the Party program by no means played the part which could probably be supposed. Moreover, the appraisal of evidence has definitely revealed, as far as the position and rise of the NSDAP is concerned, that up to 30 January 1933 the National Socialist Party had the same status as other parties; that it fought with the same legitimate means as other parties for the attainment of its objectives; and that not least among the factors of its rise is that Germany experienced in 1931-32, as a consequence of the reparations policy of the victor powers in 1919, an economic and social decline of uncommon magnitude; and that finally on 30 January 1933 the Party, being the strongest, was entrusted by the provisions of the Reich Constitution with the formation of the Government and its leader, Adolf Hitler, was nominated Reich Chancellor.

During the so-called period of struggle the Party, like all other parties, openly fought for the principles it represented, and the Prosecution could not submit in evidence a single argument from which the conclusion could be drawn that by using illegal means the Party and its leaders had been participants in a common plan aiming at launching a war of aggression. In fact, one need only keep in mind the political, economic, and military condition of Germany in the first years after the end of the first World War to recognize how improbable such a plan, aiming at starting a war, is for that time. The conception put forward by the Indictment reveals not only an entirely false idea of the economic, political, and military conditions which Germany faced as a consequence of the peace settlement by Versailles, but this conception also discloses complete failure to appreciate the intrinsic virtue of any policy.

When Adolf Hitler as the leader of the strongest party had been appointed Reich Chancellor by Reich President Von Hindenburg on 30 January 1933, it was necessarily out of the question for him and his Government, in which also other parties participated, to start drafting a common plan aiming at a war of aggression, in complete misjudgment of the political and, above all, economic conditions. The problems which the German Reich Cabinet faced at that time resulted directly from the fact that 7 million unemployed people in Germany had to be put to work. As the witness Dr. Lammers stated, the elimination of economic and social distress actually was the most important question at the first cabinet session. There was no question at all of a common plan aiming at launching a war of aggression and, in fact, it is inconceivable that in the circumstances at that time even one member of the Government could consider such an idea in any concrete shape. Furthermore, it has been established through the testimony of Dr. Lammers and other witnesses that the subject matter of the first cabinet meeting and the resolution there passed are contained in the governmental declaration of 1 February 1933, made known to the German people in the form of a manifesto of the German Government.

According to the Indictment, abrogation of the armaments restrictions imposed on Germany through the Versailles Treaty was the first aim of the conspiracy charged by the Prosecution. The final refusal of the victor powers to disarm in their turn, according to their pledge, contained in the treaty, at least accorded the German Reich the right to obtain an equalization of armament through its own rearmament. This was not done in secrecy by any means but in public, through the announcement of the law on the reintroduction of general conscription on 16 March 1935. The Prosecution have not been able to show evidence for their assertion that this law was connected with, and was part of, the common plan aimed at bringing about a war of aggression. The exclusive purpose of this law was rather to re-establish Germany's right to equality at least for that question, 16 years after the end of the first World War. Here too, with regard to the details I also refer to the statements of counsel for the Defendant Von Neurath.

In this connection brief reference is appropriate to a document which the Prosecution produced, together with nine other documents, so-called key documents, which first of all are intended to serve the purpose of establishing the proof for existence of the common plan claimed in the Indictment. This is the written record of a discussion at the Reich Chancellery of 5 November 1937, Document Number 386-PS, Exhibit Number USA-25. As is known to the Court, this is not a literal reproduction of Adolf Hitler's statements, but a report of Colonel Hossbach which was drafted by the

latter 5 days later, namely, on 10 November 1937. I have no intention of entering any further into the contents of this document. I refer here to the testimony given by the Defendants Göring and Raeder and to the statements which other defendants' counsels have made on this question. I only mention the fact that when addressing the Commanders-in-Chief and the Minister for Foreign Affairs at that time, Hitler had a chronological plan in view which reveals no conformity whatever with the subsequent events. In these circumstances, the existence of a determined and well-outlined plan by Hitler himself even seems very unlikely. Only one conclusion can with certainty be drawn from the contents of this document: Namely, that until 5 November 1937 Hitler himself only thought of an amicable settlement of the territorial problems raised by the Versailles Treaty. For this very reason, therefore, there can have been no question of a common plan aiming at the launching of a war of aggression—at least, up to this time.

This document, however, is worthy of notice for still another reason: The report begins with the Führer's assertion:

> "... that the subject of today's conference is of such importance that its discussion in other states should belong to the forum of the government cabinet. He—the Führer—however, considering the importance of the matter, refrained from making it the subject of discussion in a full session of the Reich Cabinet."

First of all, it can be left undecided in how far other questions from 1937 on were still dealt with by the Reich Cabinet in cabinet sessions, or in the so-called circulation procedure, in the administrative procedure or in the legislative way. The conclusion can, however, be drawn with certainty from the presentation of evidence and in particular from the witness Dr. Lammers' statements and those of other witnesses, and from a great number of documents submitted by the Prosecution themselves, that, at the latest, from 5 November 1937 on, all problems concerning the question of war and peace were no longer dealt with by the Government as state authority, nor by another larger constant circle of collaborators, but exclusively by Adolf Hitler himself. In all probability this situation already existed in the year 1933. In this connection I should like to draw attention to the statements of several defendants in the witness box who, for example, were informed of the reoccupation of the demilitarized zone of the Rhineland in the same way as any other citizen, that is by means of the press and radio.

It is certain, however, that all important political and military decisions were taken by Adolf Hitler alone after 5 November 1937, and particularly after the so-called Fritsch crisis and the transformation of the Reich War Ministry into the High Command of

the Armed Forces which it involved. According to the witness Dr. Lammers' statements, general conferences between the Reich Government, the Reich Party Directorate and the generals never took place. According to the statement of this witness and others, a closer connection never existed between these three institutions. Indeed, not a single one of the documents submitted by the Prosecution reveals anything which might tempt us to admit the existence of an independent collaboration between the Reich Government, the Reich Party Directorate and the Reich War Ministry or afterward the High Command of the Armed Forces and the Commanders-in-Chief of the branches of the Armed Forces and their chiefs of staff. On the contrary, if a positive conclusion can really be drawn from the presentation of evidence, it is that the power was concentrated exclusively in the hands of Adolf Hitler, that the Reich Government, the Reich Party Directorate and the Armed Forces received their orders and directives only from him, that it was Hitler's own policy to prevent a working and independent combination of these institutions.

It can thus also be explained that in all questions of a political or military nature, only those offices were included which had directly to do with the task to be carried out. It is clear from all the documents submitted by the Prosecution that, as a rule, at the conferences presided over by Hitler, there was no question of conferences as are perhaps customary in parliamentary democracies, but they were essentially only concerned with the issuing of orders.

It is not necessary to examine in detail the statements in their relation to Adolf Hitler made by nearly all the defendants, nor is it necessary to assume an attitude toward the statements on the stand taken by a whole series of other witnesses regarding Adolf Hitler's position in the German governmental system. One thing can be said with certainty: at the latest, from 5 November 1937 on, Hitler's position was so commanding and his exclusive dealing with all decisive political and military questions so firmly established that for this reason alone there could be no grounds left for the supposition of a common plan.

The Defendant Rudolf Hess, though the Führer's Deputy and the highest political leader for Party matters, did not contribute to nor take part in any of the conferences or any other important political or military decisions characterized by the Prosecution as being essential to prove the existence of a common plan, just as little as he contributed to or took part in the conference of the Führer in the Reich Chancellery on 5 November 1937 (USA-25).

The same holds good, for example, for the next exhibit, USA-26, Document Number 388-PS, submitted by the Prosecution. This is the top-secret Case Green, Czechoslovakia. Without having to enter

any further into the details of this document, it can be said without more ado that it deals with what is entirely the work of the General Staff, which was originally intended only as a problem, and afterward elaborated into a real operational plan. This operational plan was not put into action, the documents referring to Case Green, on the contrary, conclude with Directive Number 1 of the Führer and Supreme Commander of the Armed Forces, which refers to the occupation of the Sudeten German areas separated from Czechoslovakia by virtue of the Munich Agreement of 29 September 1938. Under these circumstances, it is superfluous to deal further with the letter of 27 September 1938, of the Chief of the High Command of the Armed Forces to the Führer's Deputy which is also contained in the documents for the Case Green and refers to the mobilization measures which were to be taken without the issuing of a mobilization order or a corresponding code word.

What I have already said concerning Exhibit Number USA-25 applies similarly to Document Number L-79, Exhibit Number USA-27. This is another so-called key document having as subject the instruction by the Führer of the Commanders-in-Chief of the branches of the Armed Forces and the chiefs of the general staffs in the new Reich Chancellery on 23 May 1939. Without intending to enter into the importance or the value of this document as evidence—the Führer's speech closed with the order to set up a small research staff in the High Command of the Armed Forces—this document shows clearly that no common plan in the shape asserted by the Prosecution can have existed, especially not among the defendants now facing their trial. Not a single minister or official of civil administration took part in this conference at the Führer's headquarters—which in reality was not a conference but again an instruction and issuance of orders.

The next three documents submitted by the Prosecution as key documents refer to one and the same subject, namely, to Adolf Hitler's speech addressed to the Commanders-in-Chief of the Wehrmacht on 22 August 1939. The following are the documents in question: Exhibit Number USA-28, Document Number L-3; Exhibit Number USA-29, Document Number 798-PS; and Exhibit Number USA-30, Document Number 1014-PS. I will not enter any further into the value of these documents as evidence, although it is obvious that these documents cannot be of equal value, and though it is quite clear that even an approximate reproduction of Adolf Hitler's exposition is out of the question. None of these documents reveal their authorship. Moreover, the statements differ considerably as far as volume and contents are concerned.

Document Exhibit Number USA-29 seems to contain the most complete reproduction of Hitler's statements. And here again the

conclusion is most worthy of notice, a conclusion which throws some light upon the situation at that time and the events which made it possible for Hitler to make such a speech to the Commanders-in-Chief.

> "I was convinced that Stalin would never accept the English offer. Russia is not interested in the existence of Poland and then Stalin knows it means the end of his regime, it being immaterial whether his soldiers are victorious or vanquished. Litvinov's removal was decisive. I gradually changed our attitude toward Russia. In connection with the commercial treaty we engaged in political talks. Proposal for a non-aggression pact. Then came a general proposition from Russia. Four days ago I took a special step which caused Russia to signify her willingness to conclude it, yesterday. Personal contact with Stalin is established. Von Ribbentrop will conclude the treaty the day after tomorrow. Poland is now in the position in which I wanted her to be."

Besides the Commanders-in-Chief, no minister or leader of the Party, specifically not the Defendant Rudolf Hess, attended this speech of the Führer. The same is true of Document Number 789-PS, Exhibit Number USA-23. The subject of this document is a conference with the Führer on 23 November 1939. It appears from this document that here again only the Commanders-in-Chief of the Armed Forces were assembled to receive the Führer's directions for the imminent operations in the West.

The next key document is Exhibit USA-31, Document Number 446-PS, Directive Number 21 for "Case Barbarossa." This was a question of a directive by the Führer and Supreme Commander of the Armed Forces which has an exclusively military character and was intended only for the sphere of the Armed Forces. Any participation by civilian administrative offices or of the Party, even in the person of the highest political leader, namely, the Defendant Rudolf Hess, is excluded by the nature of this directive.

It appears also from Document Number 2718-PS, Exhibit Number USA-32, the subject of which is a file memo on the result of a conference on 2 May 1941 about Case Barbarossa, that neither the Deputy of the Führer nor any other political leader took part in this conference.

The last so-called key document to be discussed is Exhibit Number USA-33, Document Number 1881-PS, an account by Minister Schmidt of the conversation between the Führer and the Japanese Foreign Minister Matsuoka in Berlin on 4 April 1941. By the very nature of this conference there could be as a matter of course no question of any participation in it by the Defendant Rudolf Hess or by any other political leader of the Party. However, something

else appears from this document, namely, the fact that it is not only false to talk about a common plan within Germany aiming at a war of aggression but, even more than this, that no kind of close political or military co-operation existed between the so-called Axis Powers, in any case as far as the relations between Germany and Japan are concerned.

What conclusion can now be drawn from the contents of these so-called key documents which the Prosecution themselves have characterized as particularly relevant to show the existence of a so-called common plan? Whether these documents are relevant or not, it is established by these notes that the Defendant Hess was not present at any of these conferences or when these orders were issued. If, in appraising this circumstance, one considers the further fact that the Defendant Rudolf Hess was the Führer's Deputy and therefore the highest political leader, and that furthermore, after 1 September 1939, he was designated as the Führer's successor after the Defendant Hermann Göring, then there would in fact seem to be no basis for the assumption of a common plan in the form asserted by the Prosecution.

In this connection, may I refer to the report of the Chief of Staff of the United States Army to the Secretary of War for the period from 1 July 1943 to 30 June 1945. I quote:

> "... The available evidence shows that Hitler's original intent was to create by absorption of Germanic peoples in the areas contiguous to Germany and by strengthening of her new frontiers, a greater Reich which would dominate Europe. To this end, Hitler pursued a policy of opportunism by which he succeeded in occupying the Rhineland, Austria, and Czechoslovakia without military opposition.
>
> "No evidence has yet been found that the German High Command had any over-all strategic plan. Although the High Command approved Hitler's policies in principle his impetuous strategy outran German military capabilities and ultimately led to Germany's defeat. The history of the German High Command from 1938 on is one of constant conflict of personalities in which military judgment was increasingly subordinated to Hitler's personal dictates. The first clash occurred in 1938 and resulted in the removal of Von Blomberg, Von Fritsch, and Beck, and of the last effective conservative influence on German foreign policy.
>
> "The campaigns in Poland, Norway, France, and the Low Countries developed into serious dissensions between Hitler and the General Staff as to details of execution of strategic plans. In each case the General Staff favored the orthodox offensive, Hitler an unorthodox attack, with objectives deep

in enemy territory. In each case Hitler's views prevailed and the astounding success of each succeeding campaign raised Hitler's military prestige to the point where his opinions were no longer challenged. His military self-confidence became unassailable after the victory in France, and he began to disparage the ideas of his generals even in the presence of junior officers. Thus no General Staff objection was expressed when Hitler made the fatal decision to invade Soviet Russia.

"When Italy entered the war, Mussolini's strategic aims contemplated the expansion of his empire under the cloak of German military success. Field Marshal Keitel reveals that Italy's declaration of war was contrary to her agreement with Germany. Both Keitel and Jodl agree that it was undesired. From the very beginning Italy was a burden on the German war potential. Dependent upon Germany and German-occupied territories for oil and coal, Italy was a constant source of economic attrition. Mussolini's unilateral action in attacking Greece and Egypt forced the Germans into the Balkan and African campaigns, resulting in overextension of the German armies which subsequently became one of the principal factors in Germany's defeat.

"Nor is there evidence of close strategic co-ordination between Germany and Japan. The German General Staff recognized that Japan was bound by the neutrality pact with Russia, but hoped that the Japanese would tie up strong British and American land, sea, and air forces in the Far East."

The statements which the Defendants Keitel and Jodl have made on the witness stand are essentially the same as the statements of the American Chief of Staff, so that further details on this point are superfluous. It may be considered as proven that not even among the most intimate circle of Adolf Hitler's associates did a complete agreement exist on the measures to be taken in the political and military field, whereby the constitutionally established relationship of rank between the officers of the Armed Forces and the head of the State and Supreme Commander need not be considered. It is plain that the existence of a common plan aiming at war cannot be accepted even in the case of that group of persons for whom it first seemed most likely.

The second common goal of the conspiracy is declared by the Indictment to be the appropriation of the territories which Germany had lost as a result of the World War of 1914-18. The preamble to the Treaty of Versailles provides for the possibility of a revision of the treaty. Going beyond this, the demand for the reunion of Austria to the German Reich and the annexation of the Sudeten

German regions cannot in itself be concluded to rest on the existence of a plan which was to have been realized at the proper moment by the use of violence or by way of war. As a matter of fact, by a disregard of the right of self-determination of nations, these territories had already been prevented in the year 1919 from annexing themselves to the German Reich. On this question I can refer to the statements I made at the beginning. Actually, the annexation of Austria took place—this may be said as a result of the presentation of evidence—under circumstances which cannot be described as warlike and which permit us to conclude that the greater part of the Austrian population approved the annexation. Concerning the Sudeten German question, it suffices here to refer to the Munich Agreement between Germany, Great Britain, France, and Italy by which the reunion of the Sudeten Germans with the Reich was settled.

And finally, the third aim of the common plan was described as the annexation of additional territories on the European continent which should serve the conspirators as "Lebensraum." The Indictment is not clear in this point and lacks substance. But in fact the question of the so-called "Lebensraum" is a problem which is completely independent of the National Socialist ideology and is determined by the size of the area and number of inhabitants. Every German Government had to and still must deal with this question. If any argument by Hitler found a lasting response in the German people, it was the demand made by him for an appropriate share for the German people in the material wealth of the world. This demand appeared to be all the more justified for the German people as the relation between the area and the number of inhabitants is very unfavorable compared to other countries.

For instance, in the European part of Russia alone there are 22.1 inhabitants per square kilometer; in the United States of America the density of population is only 17 people; and France with a population of 74.6 per square kilometer owns a territory of no less than 11.5 million square kilometers. England has 47 million inhabitants and disposes of no less than 35 million square kilometers of ground. Compared with these figures Germany had, on 1 September 1939, over 80 million subjects, a density of population of 140 and not even 600,000 square kilometers of territory. These figures speak for themselves. The question of territory is closely related to the problem of a fair distribution of the most important raw materials.

I need not give detailed reasons on the inadequate distribution of the most important sources of raw materials nor mention that certain raw materials are completely monopolized. It is certain that the bitterness about the unjust distribution of the material wealth of the world was bound to increase in the German people, as not only was every reasonable revision rejected, but moreover it was said by the opposite side in an unmistakable manner that the nations were divided into two classes, namely the "haves" and the "have-nots". In fact, this classification could be felt as nothing but scorn.

Moreover, even after 1933 there was no unanimous opinion about the possible solutions concerning the removal of the difficulties resulting from the need for space. Thus, for instance, the Defendant Rudolf Hess belonged precisely to those who wanted to solve the problem of "Lebensraum" by the acquisition of colonies, if possible. For instance, in a big speech in Stettin, on 21 March 1936, he said:

"The most natural way to make more food available for the people of Germany is to improve our living standard, that is, to supplement it by having colonies. Therefore, the Führer by stating his willingness to return to the League of Nations, hoped that the question of colonies would be submitted to examination. The Führer knows that a people without sufficient area, without a sufficient food basis, a hungry people, must in the long run become a center of unrest because of its instinct of self-preservation against which even the most ingenious statesman is powerless. For hunger is a natural instinct which cannot be subdued either by warnings or by orders. Our desire for colonies is therefore only the desire for a pacification of Europe for a long time, and therefore the question of the allocation of colonies to Germany is part of the Führer's big proposal of pacification . . ."

The world knows that the fulfillment of this demand as well as the fulfillment of all other demands for revision was refused.

The connection between the unjust distribution of the material goods of the world which contradicts all economic reason and the political tensions which shake the peace of the world again and again, simply cannot be overlooked.

Generalissimo Stalin, Chairman of the Council of the People's Commissars of the USSR, stressed these facts clearly enough in his long speech of 11 February 1946 on the occasion of the elections for the Supreme Soviet, stating inter alia as follows:

"It would be wrong to think that the second World War was caused by chance or was the result of mistakes made by various statesmen, although such mistakes had undoubtedly been committed. In reality the war was an inevitable result of the international economic and political forces founded on modern monopolistic capitalism . . . Perhaps we might escape the catastrophes of war if there were a chance of redistributing the raw materials among the countries according to their economic weight by virtue of agreed and peaceful decisions . . ." Somewhere else in his speech Stalin says:

"This is the position regarding the question of the origin and the character of the second World War. Now everyone presumably recognizes that this war never was and never could be a matter of chance in the life of the nations, that it indeed changed into a war involving the nations and their existence, and that for this reason it could not be a blitzkrieg quickly running its course . . ."

There is no need to add anything to these statements; they speak for themselves.

Your Honors, I now turn to the legal evaluation of the state of affairs which may be considered as actually established: As I have

already stated, Article 6, Paragraph 3 of the Charter is not the formulation of an independent state of criminality, but the expansion of the criminal responsibility of the leaders, instigators, and participants who have taken part in the drafting or in the execution of a common plan for committing one of the crimes mentioned in Paragraph 2. According to the regulation mentioned, these persons are to be responsible not only for the acts which they themselves have committed, but they also are to take upon themselves the penal consequences for all acts which were committed by any person in the execution of such a plan.

In Article 6, Paragraph 2a, of the Charter the fact of a crime against the peace is defined as follows:

> "The planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing."

While it is expressly defined in Article 6, Paragraph 3 of the Charter that the criminal responsibility of the participant in the drafting of a common plan is limited to acts which "have been committed by any person in execution of such a plan," the crime against the peace is according to Article 6, Paragraph 2a, of the Charter already completed with the "agreements or assurances or participation in a Common Plan or Conspiracy for the accomplishment of a plan which has as its aim the preparation, initiation, or waging of a war of aggression." In contrast to Article 6, Paragraph 3, it is here not necessary that an act of execution be actually committed.

I do not intend now to deal with the question more specifically whether the war as such and especially the starting of a war of aggression was a crime according to international law valid at the time of the outbreak of war, on 1 September 1939. This question has already been discussed in the opening speech of the Defense. This examination of the legal side of this question has shown that neither the League of Nations agreement nor the Briand-Kellogg Pact contains anything which would permit the conclusion that the starting of a war was a criminal and therefore punishable offense. International law knew neither a criminal responsibility of the state as a corporate body and even less a criminal responsibility of the agencies of the state, such as the head of the state, the members of the government, the military commanders, the economic leaders, *et cetera.*

The causes for this unsatisfactory state of international law need not be discussed. It has already been correctly pointed out that the idea of sovereignty and the refusal of the great powers in particular to relinquish some of these rights of sovereignty in the interest of a

better supernational organization, was also a reason for the unsatisfactory status of international law especially on this question. In connection with this there is another fact which does not seem to be less important to me, namely, that it was not possible until now to create an effective organization and a procedure which would satisfy the justified claims of the peoples for a proper participation in the material goods of the world, and which would also in other respects take care of a just settlement of the conflicting interests.

On the basis of this examination alone there can hardly be any doubt that a crime against the peace, as it has found its factual definition in Article 6, Paragraph 2a, of the Charter, does not exist. This section of Article 6 of the Charter does not have a sufficient basis in existing international law.

I omit the following decisive statements as they concern the effect of the secret German-Russian treaty of 23 August 1939 on the jurisdiction of the Tribunal. The Tribunal will have to consider officially to what degree the jurisdiction can still be considered valid in view of this secret treaty. I continue on Page 63. Mr. President, I am in a difficult position, as by omitting these statements from Pages 59 to 62, an incorrect picture would be created, as my actual statements concerning the contents of the German-Soviet secret treaty of 1939 could be misunderstood because of its legal consequences. I therefore ask the Tribunal to decide.

THE PRESIDENT: The Tribunal has fully considered this matter and does not desire to hear your point.

DR. SEIDL: Moreover, the following is to be said about Article 6, Paragraph 3 of the Charter: The concept of a conspiracy, as it has been expressed in Article 6, Paragraph 3, is a typical institution of Anglo-American law. The continental European law does not know any such criminal concept. But there cannot be any doubt that international penal law, insofar as there is any such law, and if one does not understand by it the sum total of the rules which are to be observed in the application of national or foreign law, likewise does not know the concept of conspiracy as constituting a crime in criminal law.

But it is not only the question of prevailing international law and the agreement of the Charter with the same which is to be examined. The issue in connection with this requires an answer to the following question also:

In the opening speeches of the four chief prosecutors and also in the discussions prior to the Trial concerning its legal basis, two entirely contradictory arguments were advanced. While some argued that the Charter was a complete expression of the prevailing international law and was in agreement with the common legal

beliefs of all members of the international legal community, the others asserted that one of the main tasks of the International Military Tribunal which was then to be set up would be to develop international law further. This latter opinion, for example, stands out clearly in the report of the American chief prosecutor to the President of the United States of 7 June 1945. Here, word for word, it states among other things:

> "In initiating this Trial, we must also remain aware of the aims with which our people assumed the burdens of war. After we entered the war, and our men and our wealth were mobilized to eradicate this evil, there was the general feeling among our people that out of the war there should arise unmistakable rules and a practical machine from which anyone who entertains the thought of a further predatory war should realize that he will be held personally responsible and that he will be personally punished . . ."

Or in another part of this report, the following is stated literally:

> ". . . According to the international law of the nineteenth and early twentieth century, the waging of war was not generally considered as unlawful or as a crime in the legal sense. Summed up, the prevailing doctrine held that both parties in any war were to be considered as being in the same legal situation and therefore had the same rights."

The legal considerations in the report then actually conclude with the following challenge:

> ". . . An attack against the fundamental principles of international relations must be considered as nothing less than a crime against the community, which rightly must protect the integrity of its fundamental agreements by punishing the aggressor. We therefore propose to raise the challenge that a war of aggression is a crime, and that modern international law has abandoned the justification according to which he who instigates or wages a war acts in accordance with the law."

And as a matter of fact, it would not be necessary to raise the demand for a new penal law if the action under consideration was already threatened with punishment by existing law.

It is obvious that the fulfillment of such a demand by a court of law—whatever the legal basis for its proceedings—would be contradictory to a principle derived from the penal legislation of nearly all civilized nations and which finds its expression in the rule *nulla poena sine lege,* that an act can only be the object of punishment if the act was declared punishable by law before the act was committed. This state of affairs seems all the more remarkable, since the rule *nulla poena sine lege* is a principle

firmly rooted in the constitution of practically all civilized nations. Thus, for example, it is contained in Article 39 of the English Magna Charta of King John of 1215, in the American Constitution of 1776 and in the declarations of the French Revolution in 1789 and 1791. This principle of *nulla poena sine lege* is not only contradictory to the assumption of a crime against peace as the Prosecution expects the Tribunal in the further development of prevailing international law to define as a punishable act, but rather it is also contradictory to the creation of another independent concept of conspiracy in criminal law by judicial dictum, in the further development of hitherto existing international law. In this it cannot make any distinction as to whether this conspiracy was directed toward committing a crime against the peace or committing a crime against the customs of war. Also, the assumption of a common plan or an agreement to commit war crimes as an independent crime in criminal law is not compatible with the principle of *nulla poena sine lege.* What are applicable here are rather—as already correctly expounded by the French chief prosecutor—are only the rules defining participation according to the law of the perpetrator's own country or according to the law in the place of perpetration. Under given circumstances, these rules defining participation are limited to the extension of the threat of punishment to cases of complicity, instigation, and assistance.

Apart from his participation in the Common Plan or Conspiracy, as defined in Count One of the Indictment, the Defendant Rudolf Hess, in connection with his personal responsibility for War Crimes and Crimes against Humanity, is essentially accused by the Prosecution on the basis of the contents of only one document, and that is Document Number R-96, Exhibit Number GB-268.

This concerns a letter from the Reich Minister of Justice to the Reich Minister and Chief of the Reich Chancellery on 17 April 1941, which deals with the introduction of penal laws against Poles and Jews in the incorporated Eastern territories. The Defendant Rudolf Hess plays a part in this only insofar as the letter mentions, among other things, that the Deputy of the Führer had proposed the discussion of the introduction of corporal punishment. If one considers that the staff of the Deputy of the Führer alone comprised 500 officials and employees, and that for questions of legislation, there was a special department which dealt directly with the separate ministries, it seems very doubtful whether the Defendant Rudolf Hess was personally concerned in this matter at all. In this connection I refer to the affidavit of the witness Hildegard Fath, Exhibit Number Hess-16. Considering, however, that the measure proposed for discussion by the Deputy of the Führer was not introduced, the knowledge of the defendant should not matter very much. Without it being necessary to probe any deeper into the subjective elements

of the case, it can be said that, in application of principles such as can be derived from the penal law of all civilized countries there is here not even question of an attempt. The attitude of the Führer, or, more correctly, the Deputy of the Führer, as expressed in the letter of the Reich Minister of Justice is irrelevant from the point of view of criminal law. We need not consider in this connection whether a penal law would have been violated if the measure proposed for discussion had actually found legislative expression in a Reich law.

Another document submitted by the Prosecution is Exhibit USA-696, Document Number 062-PS. This refers to the order of the Deputy of the Führer of 13 March 1940, which deals with the instructing of the civilian population as to the proper attitude to be adopted in case of landings by enemy aircraft or parachutists on German national territory. This is the same document concerning which I have already applied for a correction of the translation because the translation from German into English was at any rate in my opinion not correct. This document, however, is neither contained in the trial brief submitted by the British Prosecution nor was it mentioned by Colonel Griffith-Jones on 7 February 1946 when he discussed the personal responsibility of the Defendant Rudolf Hess. In consideration, however, of the fact that this order was officially submitted as documentary evidence, it is necessary to go into it at least briefly.

The reason for this order of 13 March 1940 was the fact that the French Government had given instructions to the French civilian population officially and by radio as to how they were to conduct themselves in case of landings by German aircraft. On the basis of these instructions of the French Government, the Commander-in-Chief of the German Air Force considered himself also called upon on his part to inform the German population via the official Party channels. He therefore issued a directive about the attitude to be adopted in the case of landings by enemy aircraft or parachutists, which was used as an appendix to the afore-mentioned order of the Deputy of the Führer of 13 March 1940.

This directive, however, does not contain anything which is contrary to the laws and customs of warfare, as they have been expressed, for example, in the Hague Rules on Land Warfare. This applies particularly to Figure 4, which contains the order that enemy parachutists are either to be arrested or rendered harmless. According to the text as well as the sense of this Figure 4, there cannot be the slightest doubt that this was only meant to say that enemy parachutists were to be fought and subdued if they did not surrender voluntarily and tried to avoid their arrest by using force, particularly by the use of firearms. This becomes evident from the word "or" alone. First of all, the attempt was to be made to take

them prisoner. This alone in the interest of the intelligence service. Only if this proved impossible because of resistance were they to be rendered harmless, that means subdued.

Any other interpretation of this order would not only be contrary to the text and the sense, but moreover would also be contrary to the fact that up to the French campaign the war had been waged according to rules such as had been established, among others, in the Hague Rules on Land Warfare and that, at any rate at that time, March 1940, the war had not yet developed into the mutual struggle for annihilation that it was to become after the outbreak of the German-Russian war. The fact that a different interpretation is absolutely impossible is also evident from the so-called "Commando Order" of the Führer of 18 October 1942, which was presented by the Prosecution under Exhibit Number USA-501, Document Number 498-PS. The deliberations preceding this order—which, by the way, was issued under completely different conditions—and the fact that this Commando Order was decreed by Hitler himself, in spite of the opposition of the High Command of the Armed Forces and the Chief of the Armed Forces Operations Staff, would have been entirely superfluous, if the Commander-in-Chief of the Air Force had already issued instructions which served the same purpose in March 1940. It is furthermore expressly specified in Figure 4 of the Führer Order of 18 October 1942, that captured members of Commando groups were to be handed over to the SD.

As the German text of this directive about the order of 13 March 1940 is completely unequivocal and does not leave any room for doubt, I refrained from procuring additional evidence about this question. In the event, however, that the Tribunal should not share this assumption, it would be unavoidable for the complete clarification of the facts that the Tribunal should, on their own initiative, procure the instructions which the French Government issued at the beginning of the year 1940 to the French civilian population in case of landings by German aircraft or German parachutists.

It is not necessary to go into any more detail into Exhibit Number GB-267, Document Number 3245-PS, which is also brought forward against the Defendant Hess, as the contents of this document can under no circumstances be considered a crime against the rules of warfare or against humanity, if the afore-mentioned principles are applied.

Besides being indicted as an individual, Rudolf Hess is also indicted as a member of the SA, the SS, the Corps of Political Leaders and the Reich Cabinet. As far as his membership in the SA and the SS is concerned, more detailed explanations are superfluous. From the documents presented by the Prosecution, it becomes evident that the Defendant Rudolf Hess held only the

honorary rank of an Obergruppenführer in both of these organizations. No command or disciplinary powers were connected with it.

As Deputy of the Führer, however, the Defendant Rudolf Hess held the highest office which existed in the Corps of Political Leaders. I cannot assume the task of commenting in detail on the charge which is brought against the Corps of Political Leaders under, and in application of, Article 9 of the Charter, and which is characterized by its motion to declare the Corps of Political Leaders a criminal organization. Considering the fact, however, that the Defendant Rudolf Hess, although not the only political leader here on the defendants' bench, was nevertheless the highest political leader, there arises the occasion for making a few fundamental remarks.

According to Article 9 of the Charter, the Tribunal can declare to a member of an organization that the organization to which the defendant belongs or belonged was a criminal one. According to the Charter, a necessary condition for this is that the declaration of the Tribunal be connected with an act for which the defendant is convicted. By an "act" within the meaning of Article 9 of the Charter one can only understand a deed of commission or omission for which the defendant is personally accountable and to blame, but not the extended liability for the act of another resulting in a given case from Article 6, Paragraph 3. Since, however, neither in the Indictment nor in the trial brief dealing with the personal responsibility of the Defendant Rudolf Hess, is an act of any kind charged against him which satisfies the conditions constituting a war crime or a crime against humanity, a conviction of the Defendant Hess, in this case also—namely as a member of the Corps of Political Leaders—would be synonymous with the establishment of a criminal responsibility for the acts or omissions of another. Although the Defendant Rudolf Hess was the highest political leader and although no action is charged against him personally which constitutes a crime according to any penal law, he is to be convicted as a member of the allegedly criminal organization of which he was the leader; it cannot be denied that this is a legal situation which does not happen every day.

But something else appears more important. The Defense were compelled to attack the very heart of the Charter, namely Article 6, as not being consistent with generally valid principles of international law. Article 9 of the Charter is no less in contradiction with the common legal beliefs of all members of the international legal community. There is neither a legal statute in international law nor a legal statute in any national law which declares the membership in an organization as criminal without examining in each individual case whether the person concerned has made himself personally guilty by his own actions or omissions. Contrary to

the general principles of criminal law, as they are derived from the penal laws of all civilized countries, the Charter provides in Article 9 for a criminal responsibility and collective liability of all members of certain organizations and institutions, and this without any consideration as to whether the individual member has incurred any guilt.

The Charter thus abandons a principle which is an integral part of any modern system of criminal law. The rule of "no punishment without guilt"—and the declaration that a certain organization is criminal is a punishment for the members affected by it—is an essential part of the idea of the criminal law of our time, insofar as one understands by guilt the sum total of those necessary conditions for punishment of the culprit. If the fact of membership in a certain organization alone becomes the object of a penal sentence, then the act which constitutes the charge no longer appears as a legally objectionable expression of the culprit's personality. This must particularly apply to organizations which had hundreds of thousands, and even millions of members. For that reason punishment without guilt has hitherto existed only in primitive law. Therefore, Von Liszt, the great German teacher of criminal law, who was at the same time a constructive thinker in the field of international law, says appropriately:

> "Just as religious teaching does not oppose the visiting of the sins of the fathers on the children and on the children's children, just as in the dramas of the ancients the place of guilt is taken by blind, inexorable fate and in the literature of today by the law of heredity, so even the oldest law of all nations knows of no penalty without guilt."

Only in primitive law did there exist a criminal responsibility without guilt. As a matter of fact, in the legal history of all countries, the so-called criminal responsibility for the effects of crime without actual guilt was very soon replaced by the principle of responsibility attaching to the guilty only and thereby that state was reached which is alone compatible with the dignity of man. The regulation provided by Article 9 of the Charter signifies not only a regrettable contribution to the hastening of the apparently inevitable reduction of men to mere members of a mass, but it is, moreover, a relapse to the first beginnings of concepts of criminal law. Considering these facts, it cannot be acknowledged that this provision of the Charter is in agreement with prevailing law as it is derived from the common legal beliefs of all the members of the community of international law and from the general principle of criminal law in all civilized nations.

Rudolf Hess is finally accused as a member of the Reich Cabinet. Insofar as his membership in the Secret Cabinet Council is concerned, the following may be said: The presentation of evidence

has shown that this Secret Cabinet Council was only created so that the resignation of the former Reich Foreign Minister Von Neurath would not appear to the public as signifying a breach between him and Adolf Hitler. Actually, no session of this Secret Cabinet Council ever took place. The council did not even meet to outline its sphere of activity.

With reference to the Reich Cabinet, it is established on the basis of the results of the presentation of evidence that no cabinet meetings took place after 1937 at the latest. The tasks to be performed by the Reich Cabinet, especially its legislative functions, were taken care of by the so-called circulating procedure. The presentation of evidence has shown further that from 1937 on at the latest, the major political and military decisions were made exclusively by Adolf Hitler alone without the members of the Reich Cabinet having been informed of them in advance. After Hitler's appointment as Reich Chancellor, and surely much earlier than 1937, the Reich Cabinet as an institution probably made no ultimate decision on politically or militarily important questions. It would be completely misleading to assume that the members of the Reich Cabinet in the National Socialist State had a position even approximately like the position which is a matter of course in a state governed by parliamentarian principles. Just as little as there was a common plan or conspiracy among the men sitting on the defendants' bench, was there anything of the kind within the Reich Cabinet.

It was even partly true that forces with divergent aims became apparent within the Reich Cabinet, which in itself would have made it impossible to agree on a common plan, such as was expressed in the Indictment. It is sufficent here to point to the testimony of the witness Lammers and to the fact that Adolf Hitler, from whom such facts could not remain hidden, finally issued a prohibition to the effect that the individual Reich ministers no longer had the right to assemble for conferences on their own motion.

In this connection, something else cannot be left unmentioned. If the presentation of evidence in this Trial has revealed anything with certainty, then it is the proof of the position of enormous political power and unimaginable authority which Adolf Hitler held within the German governmental system. When Generaloberst Jodl testified on the witness stand that there was no one who could successfully contradict Hitler in the long run and that such a person could not exist, then one might say that he expressed the true state of affairs in a few words. That may perhaps be regrettable, but cannot in any way alter the facts as such. Now, if one also bears in mind that this dominant position of Hitler became constantly greater during the course of the years, then this alone should be

sufficient to exclude the assumption of a common plan, such as is alleged in the Indictment.

In any case, the following must be said: The former Party leaders, generals and cabinet members indicted before this Tribunal receive an importance in this Trial because of Hitler's death which it is apparent they actually did not have in public life in the past. While the entire political life of Germany was overshadowed during the past 12 years by the overwhelming influence of Hitler's personality, the absence of this man from the defendants' bench affects this Trial in such a manner that it undoubtedly must result in an entirely distorted picture of the political reality of the past 12 years.

Your Honors, I come now to the event which was to conclude the political career of the Defendant Rudolf Hess—his flight to England on 10 May 1941. For several reasons this undertaking is of importance in this Trial as evidence. As is shown by the presentation of evidence, the Defendant Rudolf Hess had made the decision for this flight as early as June 1940—that is, immediately after the surrender of France.

The execution of the plan was delayed for a number of reasons: In particular, certain technical conditions had to be fulfilled in advance. Moreover, considerations of a political nature played a part, namely, that such an enterprise could be attended by success, if at all, only when political conditions and especially the military situation appeared favorable for the opening of peace negotiations; for re-establishment of peace was undoubtedly the aim which Hess pursued in his flight to England.

When the Defendant Hess was led before the Duke of Hamilton on the day after his landing, he declared to the latter, "I come on a mission of humanity." During the conversations which the defendant had with Mr. Kirkpatrick of the Foreign Office on 13, 14, and 15 May, he explained to him in detail the motives which had induced him to take this extraordinary step. At the same time, he informed him of the conditions under which Hitler would be prepared to make peace.

On 9 June 1941, a conversation took place between Rudolf Hess and Lord Simon, who appeared on the order of the British Government. I submitted the transcript of this conversation to the Tribunal as evidence and am referring to it.

It is shown by this document that the motive for this extraordinary flight was the intention to avoid further bloodshed and to create favorable conditions for the opening of peace negotiations. During the course of this conversation, the Defendant Hess handed a document to Lord Simon which stated the four conditions under

which Hitler would have been prepared at that time to conclude peace with England. The conditions were:

"1. In order to prevent future wars between the Axis and England, a delimitation of spheres of interests is to take place. The sphere of interests of the Axis Powers is to be Europe, and that of England her Colonial Empire.

"2. Return of the German colonies.

"3. Indemnification of German nationals who were domiciled prior to or during the war in the British Empire and who suffered damage to life or property because of measures taken by the Government in the Empire, or through incidents such as pillage, riots, *et cetera.* Indemnification to British nationals on the same basis by Germany.

"4. Conclusion of an armistice and peace treaty with Italy at the same time."

Rudolf Hess explained to Mr. Kirkpatrick, as well as to Lord Simon, that such were the terms on which Hitler was prepared to make peace with Great Britain immediately after the conclusion of the French campaign and that this position of Hitler had undergone no further change since completion of the campaign against France. There are no indications of any kind why this account of the defendant should not appear plausible. On the contrary, it is fully in harmony with many statements which Hitler himself had made concerning relations between Germany and England. In addition to that, the Defendants Göring and Von Ribbentrop likewise confirmed while in the witness box that the terms which Hess disclosed to Lord Simon corresponded completely with Hitler's views.

If the terms announced by Hess provided that Europe was to be the sphere of interests of the Axis Powers, the conclusion can in no way be drawn from this that this was synonymous with a domination of Europe by the Axis Powers. The declarations made by Hess—they are included in written notes on the conversation between him and Lord Simon—rather demonstrate with all clarity that this was merely to eliminate any interference by England in continental Europe.

What legal consequences result from these facts? In the Indictment, the Defendant Hess is charged—together with the other defendants—with having co-operated in the psychological preparations of the German people for war. To the extent that the psychological preparation for war alleged by the Prosecution is part of the common plan, it is sufficient to refer to the remarks I have made in that connection. However, if the Prosecution also want to allege that the Defendant Hess went further and personally engaged in this psychological preparation for war, then the contrary

is proved at the very least—apart from his numerous speeches in favor of peace—by his flight to England and the intentions behind it.

Without going into detail as regards general circumstances and the personal relations between Hitler and the Defendant Hess, one thing can still be said with certainty: By his flight to England the Defendant Hess accomplished a deed which in view of his position in the Party and in the State, and especially in view of the fact that after Göring he was marked as Hitler's successor, can only be characterized as a sacrifice, a sacrifice which Hess made not only in the interest of the restoration of peace, and in the interest of the German people, but also in that of Europe and the whole world. This sacrifice was all the greater as Hess was one of the very few whose relation to Hitler was based on intimate personal confidence. If, nevertheless, the Defendant Hess decided to stake his position in the Party and in the State and his personal bond with Hitler for the re-establishment of peace, this must lead to the conclusion that the Defendant Hess likewise saw in war the ghastly scourge of mankind and that it must appear quite improbable for this reason alone that it was his intention to prepare the German people for war.

Your Honors, the following statements deal with the question of what legal conclusions are to be drawn from the flight of the Defendant Hess to England with respect to his participation in the Common Plan or Conspiracy alleged by the Prosecution, particularly, in view of the attitude of the defendant, to what extent any criminal responsibility can still be assumed, even after the flight to England. The Defendant Hess himself does not wish to have any favorable conclusions drawn for him in the course of this Trial from this flight and from the intentions connected with it. He has, therefore, also asked me to omit a part of the following statement. Nevertheless, I consider it my duty as the defense counsel to draw all the legal conclusions resulting from the flight of the Defendant Hess and his intentions in connection with it and to point out the facts and points of view which in any way speak in the defendant's favor.

As I have explained, it must be assumed on the basis of the evidence presented, that the plan alleged by the Prosecution did not exist. In the event, however, that the Tribunal should judge the results of the testimony differently and in application of Article 6, Paragraph 3 of the Charter, should accept the existence of such a plan, directed toward the beginning of a war of aggression, it becomes necessary to examine the question of what legal consequences the flight of the Defendant Rudolf Hess to England and his intentions in connection with it had on his participation in the common plan as asserted by the Prosecution.

To this the following can be said: Article 6, Paragraph 3 of the Charter extends the criminal responsibility of the defendant to include all acts committed by any person while carrying out the common plan alleged by the Prosecution. The Charter itself contains no provisions as to whether and under what conditions a separation or withdrawal from a common plan is possible. This does not justify the conclusion, however, that such a withdrawal should be excluded as a matter of principle. That assumption is precluded by the very reason that the Charter quite clearly does not purport to give an exhaustive ruling on all questions of substantive and procedural law. If a withdrawal is permitted in Anglo-American law as a matter of fundamental principle, this should be possible with more reason under the Charter. For the Charter represents a compendium of principles in which institutions of continental European law are also given consideration. Continental European law proceeds quite unequivocally from the idea that the responsibility of the perpetrator under criminal law extends only so far as his actions or omissions are controlled by his will. The withdrawal from the attempt, as a reason for acquittal, has therefore become an institution which can be found in almost all European codes of law. If, according to Anglo-American law, withdrawal from the conspiracy is possible, there can be no doubt as to that possibility's existing, in principle, according to the Charter. There is all the more reason for that assumption, in that it has been a practice on principle to apply German law in cases where the Charter fails to establish a binding rule. With regard to the Defendant Rudolf Hess, there should be even less reason for doubt, because the acts charged against the Defendant Rudolf Hess were committed within the territory of the German Reich. According to generally accepted principles of law, as they find expression in particular in the so-called international penal code of all nations, the so-called *lex loci,* that is, the law of the place where the act was committed, is binding in this case.

Applying these principles to the behavior of the Defendant Rudolf Hess and to his flight to England of 10 May 1941, it follows in the first place—and the evidence likewise did not produce anything to the contrary—that all the subsequent developments could not have been controlled by his will. His influence on the course of events within the development of the war as a whole ceased, at the latest, with his flight to England. It contradicts all principles of penal law, as they are derived from the codes of law of all civilized nations, to hold someone criminally responsible for acts and results upon which he had no influence, and was no longer able to exert any influence, and which he did not adopt by his own volition.

In this connection reference should also be made to the Prosecution's contention that the Defendant Hess did not undertake his flight to England in order to create favorable conditions for peace negotiations. That, on the contrary, it was his intention—this is the argument of the Prosecution—thus to protect Germany's rear in her planned campaign against the Soviet Union. The documents submitted by the Prosecution do not provide any basis for this assumption. To begin with, this is contradicted by the fact that the Defendant Hess had already decided on the flight as early as June 1940, in other words, at a time when no one in Germany thought of a campaign against the Soviet Union. On the contrary, from the letter which the Defendant Hess left behind and which was handed to Adolf Hitler at a time when Hess had already landed in England, it becomes perfectly clear that Hess had no knowledge of the impending campaign against the Soviet Union. In this letter the Defendant Hess did not state by a single word—and this is established by the testimony of the witness Fath, who read the letter herself—that the purpose of his flight was to cover Germany's rear for the impending campaign against the Soviets. In that letter Hess did not mention the Soviet Union by a single word. It must rather be assumed, with a probability which almost amounts to certainty, that if Hess had had knowledge of the proposed attack, and if he had intended to combine the intention with his flight, which the Prosecution now claims, Hess would have dealt with that question. In this connection I should like to refer the Tribunal to Exhibit Number USA-875, Document Number 3952-PS which also clearly shows that Hess can have had no knowledge of the impending campaign against the Soviet Union.

But even if Hess had had definite knowledge of the planned campaign against the Soviet Union, this would not oppose the reason for his acquittal under criminal law in regard to the subsequent period of time. Evidence has shown that in ordering the attack against the Soviet Union, the idea of anticipating a forthcoming attack on the part of the Soviets was by no means last in Hitler's mind. I refer to the report of the American Chief of Staff Marshall, which I have already read.

It is immaterial in connection with the question to be examined here, whether such an attack was actually planned by Soviet Russia and was imminent. Statements made by the Defendant Jodl while in the witness box must make this appear at least very likely, if not absolutely certain. The decisive point here is merely that on the basis of the reports he had before him Hitler personally was of that opinion. Had the Defendant Rudolf Hess been successful in establishing the necessary conditions for armistice and peace negotiations in England, the political and military situation in Europe would have been so fundamentally changed that under these

modified conditions an attack by the Soviet Union on Germany would have appeared most unlikely, and the apprehensions entertained by Hitler would have become untenable. The attempt made by the Defendant Hess in his flight to England would also maintain its character as a reason for acquittal under criminal law for all that happened after 10 May 1941, and in carrying out the common plan alleged by the Prosecution, even if it were argued that it was not the fear of an imminent Soviet attack which prompted Hitler in his decision, but the embarrassing economic situation in which Germany found herself as a result of the failure of the invasion of England. For with the ending of war with England, this embarrassing economic situation of Germany would also have come to an end; at least it would not have been so stringent.

In conclusion, it may be said that in undertaking his flight to England, which was linked with his plans for the restoration of peace, the Defendant Hess committed his entire person in an attempt which obviously sprang from the desire to avoid further bloodshed at all costs. In application of principles of law such as are derived from the penal codes of all civilized nations, and especially in application of German penal law—which if doubt arises is to be taken as a basis for this question—the conclusion must be drawn that the criminal responsibility of the Defendant Hess will in any case be confined to acts which were committed prior to the flight to England.

Your Honors, the past war has brought misery upon the whole of mankind to an almost unimaginable extent; it has turned Europe into a continent bleeding from a thousand wounds and left Germany a field of ruins. It appears certain that at the present stage of modern technical developments, humanity would not survive another world war. As far as it is humanly possible to foresee, this would completely annihilate civilization, which has already suffered unspeakably in this war. It appears therefore only too understandable if, under these circumstances, an endeavor should be made in the name of humanity, which is struggling for its existence, to leave nothing untried, even from the legal standpoint, to prevent the repetition of such a catastrophe.

There can, however, be no doubt that the law, whatever its strength may be in social life, can only play a subordinate part in the prevention of war. This applies without any limitation as long as the community of nations is composed of sovereign states which acknowledge no legal code derived from a superior authority, and as long as no procedure and no organization exists which by virtue of its own authoritative power could establish laws legally limiting the legitimate claims of the nations and bringing them into harmony with one another. As long as these conditions are not fulfilled,

justice cannot be in the domain of international relations the regulating force it is in national life where it rests directly upon the power of the state which is behind it. Tempting as it may be to try to establish at least an improved and more powerful body of international law on the ruins left us by the past world war, such an attempt must be doomed to failure from the outset if it does not coincide with a comprehensive new order of all international relations and if international law is not simultaneously an essential part of an order which guarantees the indispensable rights of all nations and which assures in particular the satisfaction of the legitimate claims of every nation to a proportionate share of the material wealth of the world. The Charter of the International Military Tribunal is undoubtedly not part of such a general new order. It was enacted by the victorious powers for a limited duration, namely, as a foundation for a criminal trial against the statesmen, military commanders, and economic leaders of the Axis Powers which had been defeated in war. The contents of the London Agreement made the Charter of the International Military Tribunal, which constituted an essential part of this agreement, appear as a legislative measure *ad hoc* by reason of the very time limit of one year stipulated by Article 7. As a matter of fact, it can scarcely remain doubtful that essential parts of the Charter are not in accordance with the general convictions of all members of the international legal community and that they do not, therefore, constitute really valid international law. Under these circumstances, a conviction for a crime against the peace and for participation in a common plan to initiate a war of aggression could only take place at variance with prevailing international law if the Tribunal decided, in violation of the principle *nulla poena sine lege,* upon a juridical extension of international law. Great as this temptation may be, its consequences would be incalculable. Not only would a principle be violated which is derived from the principles of the criminal law of all civilized nations and constituted in particular an integral component of international law, namely that an act can be penalized only when its penal character has been juridically specified prior to the commission of the act; but above all, in view of the fact that in the present Trial facts were revealed which excluded jurisdiction on Counts One and Two of the Indictment and the jurisdiction of the Tribunal so far, the violation of the principle *nulla poena sine lege,* combined with these special circumstances, must put the concept of law in doubt altogether.

A violation of so fundamental a legal principle inherent in all judicial systems—and that applies to international law as well—as expressed in the maxim n u l l a p o e n a s i n e l e g e, and even more so in the postulate that nobody must be a judge i n r e s u a, would not only obstruct any further development of international law but would, furthermore, indubitably lead to an increased legal insecurity.

If the way for genuine progress in international legislation is not to be obstructed, then only the actual international code which was valid at the time the acts were committed can be considered as the legal basis for the judgment of this Tribunal.

THE PRESIDENT: The Tribunal will now adjourn.

[The Tribunal adjourned until 26 July 1946 at 1000 hours.]

ONE HUNDRED AND EIGHTY-SEVENTH DAY

Friday, 26 July 1946

Morning Session

THE PRESIDENT: I call on the chief prosecutor, the United States of America.

MARSHAL: May it please the Tribunal, the Defendant Hess is absent.

MR. JUSTICE ROBERT H. JACKSON (Chief of Counsel for the United States): Mr. President and Members of the Tribunal: An advocate can be confronted with few more formidable tasks than to select his closing arguments where there is great disparity between his appropriate time and his available material. In 8 months—a short time as state trials go—we have introduced evidence which embraces as vast and varied a panorama of events as has ever been compressed within the framework of a litigation. It is impossible in summation to do more than outline with bold strokes the vitals of this Trial's mad and melancholy record, which will live as the historical text of the twentieth century's shame and depravity.

It is common to think of our own time as standing at the apex of civilization, from which the deficiencies of preceding ages may patronizingly be viewed in the light of what is assumed to be "progress." The reality is that in the long perspective of history the present century will not hold an admirable position, unless its second half is to redeem its first. These two-score years in the twentieth century will be recorded in the book of years as one of the most bloody in all annals. Two World Wars have left a legacy of dead which number more than all the armies engaged in any way that made ancient or medieval history. No half-century ever witnessed slaughter on such a scale, such cruelties and inhumanities, such wholesale deportations of peoples into slavery, such annihilations of minorities. The terror of Torquemada pales before the Nazi Inquisition. These deeds are the overshadowing historical facts by which generations to come will remember this decade. If we cannot eliminate the causes and prevent the repetition of these barbaric events, it is not an irresponsible prophecy to say that this twentieth century may yet succeed in bringing the doom of civilization.

Goaded by these facts, we were moved to redress the blight on the record of our era. The defendants complain that our pace is too fast. In drawing the Charter of this Tribunal, we thought we were recording an accomplished advance in international law. But they say we have outrun our times, that we have anticipated an advance that should be, but has not yet been made. The Agreement of London, whether it originates or merely records, at all events marks a transition in international law which roughly corresponds to that in the evolution of local law when men ceased to punish crime by "hue and cry" and began to let reason and inquiry govern punishment. The society of nations has emerged from the primitive "hue and cry," the law of "catch and kill." It seeks to apply sanctions to enforce international law, but to guide their application by evidence, law, and reason instead of outcry. The defendants denounce the law under which their accounting is asked. Their dislike for the law which condemns them is not original. It has been remarked before that: "No thief e'er felt the halter draw with good opinion of the law."

I shall not labor the law of this case. The position of the United States was explained in my opening statement. My distinguished colleague, the Attorney General of Great Britain, will reply on behalf of all the chief prosecutors to the defendants' legal attack. At this stage of the proceedings, I shall rest upon the law of these crimes as laid down in the Charter. The defendants, who except for the Charter would have no right to be heard at all, now ask that the legal basis of this Trial be nullified. This Tribunal, of course, is given no power to set aside or modify the agreement between the Four Powers, to which 18 other nations have adhered. The terms of the Charter are conclusive upon every party to these proceedings.

In interpreting the Charter, however, we should not overlook the unique and emergent character of this body as an International Military Tribunal. It is no part of the constitutional mechanism of internal justice of any of the signatory nations. Germany has unconditionally surrendered, but no peace treaty has been signed or agreed upon. The Allies are still technically in a state of war with Germany, although the enemy's political and military institutions have collapsed. As a military tribunal, this Tribunal is a continuation of the war effort of the Allied nations. As an International Tribunal, it is not bound by the procedural and substantive refinements of our respective judicial or constitutional systems, nor will its rulings introduce precedents into any country's internal system of civil justice. As an International Military Tribunal, it rises above the provincial and transient and seeks guidance not only from international law but also from the basic principles of jurisprudence which are assumptions of civilization and which long have found embodiment in the codes of all nations.

Of one thing we may be sure. The future will never have to ask, with misgiving, what could the Nazis have said in their favor. History will know that whatever could be said, they were allowed to say. They have been given the kind of a Trial which they, in the days of their pomp and power, never gave to any man.

But fairness is not weakness. The extraordinary fairness of these hearings is an attribute of our strength. The Prosecution's case, at its close, seemed inherently unassailable because it rested so heavily on German documents of unquestioned authenticity. But it was the weeks upon weeks of pecking at this case, by one after another of the defendants, that has demonstrated its true strength. The fact is that the testimony of the defendants has removed any doubt of guilt which, because of the extraordinary nature and magnitude of these crimes, may have existed before they spoke. They have helped write their own judgment of condemnation.

But justice in this case has nothing to do with some of the arguments put forth by the defendants or their counsel. We have not previously and we need not now discuss the merits of all their obscure and tortuous philosophy. We are not trying them for the possession of obnoxious ideas. It is their right, if they choose, to renounce the Hebraic heritage in the civilization of which Germany was once a part. Nor is it our affair that they repudiated the Hellenic influence as well. The intellectual bankruptcy and moral perversion of the Nazi regime might have been no concern of international law had it not been utilized to goosestep the Herrenvolk across international frontiers. It is not their thoughts, it is their overt acts which we charge to be crimes. Their creed and teachings are important only as evidence of motive, purpose, knowledge, and intent.

We charge unlawful aggression but we are not trying the motives, hopes, or frustrations which may have led Germany to resort to aggressive war as an instrument of policy. The law, unlike politics, does not concern itself with the good or evil in the *status quo,* nor with the merits of the grievances against it. It merely requires that the *status quo* be not attacked by violent means and that policies be not advanced by war. We may admit that overlapping ethnological and cultural groups, economic barriers, and conflicting national ambitions created in the 1930's, as they will continue to create, grave problems for Germany as well as for the other peoples of Europe. We may admit too that the world had failed to provide political or legal remedies which would be honorable and acceptable alternatives to war. We do not underwrite either the ethics or the wisdom of any country, including my own, in the face of these problems. But we do say that it is now, as it was for sometime prior to 1939, illegal and criminal for Germany or any other nation to redress grievances or seek expansion by resort to aggressive war.

Let me emphasize one cardinal point. The United States has no interest which would be advanced by the conviction of any defendant if we have not proved him guilty on at least one of the Counts charged against him in the Indictment. Any result that the calm and critical judgment of posterity would pronounce unjust would not be a victory for any of the countries associated in this Prosecution. But in summation we now have before us the tested evidences of criminality and have heard the flimsy excuses and paltry evasions of the defendants. The suspended judgment with which we opened this case is no longer appropriate. The time has come for final judgment and if the case I present seems hard and uncompromising, it is because the evidence makes it so.

I perhaps can do no better service than to try to lift this case out of the morass of detail with which the record is full and put before you only the bold outlines of a case that is impressive in its simplicity. True, its thousands of documents and more thousands of pages of testimony deal with an epoch and cover a continent, and touch almost every branch of human endeavor. They illuminate specialities, such as diplomacy, naval development and warfare, land warfare, the genesis of air warfare, the politics of the Nazi rise to power, the finance and economics of totalitarian war, sociology, penology, mass psychology, and mass pathology. I must leave it to experts to comb the evidence and write volumes on their specialities, while I picture in broad strokes the offenses whose acceptance as lawful would threaten the continuity of civilization. I must, as Kipling put it, "splash at a 10-league canvas with brushes of comet's hair."

The Crimes of the Nazi Regime.

The strength of the case against these defendants under the conspiracy Count, which it is the duty of the United States to argue, is in its simplicity. It involves but three ultimate inquiries: First, have the acts defined by the Charter as crimes been committed; second, were they committed pursuant to a Common Plan or Conspiracy; third, are these defendants among those who are criminally responsible?

The charge requires examination of a criminal policy, not of a multitude of isolated, unplanned, or disputed crimes. The substantive crimes upon which we rely, either as goals of a common plan or as means for its accomplishment, are admitted. The pillars which uphold the conspiracy charge may be found in five groups of overt acts, whose character and magnitude are important considerations in appraising the proof of conspiracy.

1. The Seizure of Power and Subjugation of Germany to a Police State.

The Nazi Party seized control of the German State in 1933. "Seizure of power" is a characterization used by defendants and defense witnesses, and so apt that it has passed into both history and everyday speech.

The Nazi *junta* in the early days lived in constant fear of overthrow. Göring, in 1934, pointed out that its enemies were legion and said:

> "Therefore, the concentration camps have been created, where we have first confined thousands of Communists and social democrat functionaries" (2344-PS).

In 1933 Göring forecast the whole program of purposeful cruelty and oppression when he publicly announced:

> "Whoever in the future raises a hand against a representative of the National Socialist movement or of the State must know that he will lose his life in a very short while" (2494-PS).

New political crimes were created to this end. It was made a treason, punishable with death, to organize or support a political party other than the Nazi Party (2548-PS). Circulating a false or exaggerated statement, or one which would harm the State or even the Party, was made a crime (1652-PS). Laws were enacted of such ambiguity that they could be used to punish almost any innocent act. It was, for example, made a crime to provoke "any act contrary to the public welfare" (1390-PS).

The doctrine of punishment by analogy was introduced to enable conviction for acts which no statute forbade (1962-PS). Minister of Justice Gürtner explained that National Socialism considered every violation of the goals of life which the community set up for itself to be a wrong *per se*, and that the acts could be punished even though it was not contrary to existing "formal law" (2549-PS).

The Gestapo and the SD were instrumentalities of an espionage system which penetrated public and private life (1680-PS). Göring controlled a personal wire-tapping unit. All privacy of communication was abolished (1390-PS). Party Blockleiter appointed over every 50 householders spied continuously on all within their ken (1893-PS).

Upon the strength of this spying individuals were dragged off to "protective custody" and to concentration camps without legal proceedings of any kind (1956-PS) and without statement of any reason therefor (2533-PS). The partisan Political Police were exempted from effective legal responsibility for their acts (2347-PS).

With all administrative offices in Nazi control and with the Reichstag reduced to impotence, the judiciary remained the last obstacle to this reign of terror (2469-PS). But its independence was soon overcome and it was reorganized to dispense a venal justice (784-PS). Judges were ousted for political or racial reasons and were

spied upon and put under pressure to join the Nazi Party (2967-PS). After the Supreme Court had acquitted three of the four men whom the Nazis accused of setting the Reichstag fire, its jurisdiction over treason cases was transferred to a newly established "People's Court" consisting of two judges and five Party officials (2967-PS). The German film of this "People's Court" in operation, which we showed in this chamber, revealed its presiding judge pouring partisan abuse on speechless defendants (3054-PS). Special courts were created to try political crimes, only Party members were appointed judges (2065-PS), and "judges' letters" instructed the puppet judges as to the "general lines" they must follow (D-229).

The result was the removal of all peaceable means either to resist or to change the Government. Having sneaked through the portals of power, the Nazis slammed the gate in the face of all others who might also aspire to enter. Since the law was what the Nazis said it was, every form of opposition was rooted out and every dissenting voice throttled. Germany was in the clutch of a police state, which used the fear of the concentration camp as a means to enforce nonresistance. The Party was the State, the State was the Party, and terror by day and death by night were the policy of both.

2. The Preparation and Waging of Wars of Aggression.

From the moment the Nazis seized power, they set about feverish but stealthy efforts, in defiance of the Versailles Treaty, to arm for war. In 1933 they found no air force. By 1939 they had 21 squadrons, consisting of 240 echelons or about 2,400 first-line planes, together with trainers and transports. In 1933 they found an army of 3 infantry and 3 cavalry divisions. By 1939 they had raised and equipped an army of 51 divisions, 4 of which were fully motorized and 4 of which were Panzer divisions. In 1933 they found a navy of 1 cruiser and 6 light cruisers. By 1939 they had built a navy of 4 battleships, 1 aircraft carrier, 6 cruisers, 22 destroyers, and 54 submarines. They had also built up in that period an armament industry as efficient as that of any country in the world (EC-28).

These new weapons were put to use, commencing in September 1939, in a series of undeclared wars against nations with which Germany had arbitration and nonaggression treaties, and in violation of repeated assurances. On September 1, 1939, this rearmed Germany attacked Poland. The following April witnessed the invasion and occupation of Denmark and Norway, and May saw the overrunning of Belgium, the Netherlands, and Luxembourg. Another spring saw Yugoslavia and Greece under attack, and in June 1941 came the invasion of Soviet Russia. Then Japan, which Germany had embraced as a partner, struck without warning at Pearl Harbor

in December 1941 and 4 days later Germany declared war on the United States.

We need not trouble ourselves about the many abstract difficulties that can be conjured up about what constitutes aggression in doubtful cases. I shall show you, in discussing the conspiracy, that by any test ever put forward by any responsible authority, by all the canons of plain common sense, these were unlawful wars of aggression in breach of treaties and in violation of assurances.

The third group of crimes was: Warfare in Disregard of International Law.

It is unnecessary to labor this point on the facts. Göring asserts that the Rules of Land Warfare were obsolete, that no nation could fight a total war within their limits. He testified that the Nazis would have denounced the conventions to which Germany was a party, but that General Jodl wanted captured German soldiers to continue to benefit from their observance by the Allies.

It was, however, against the Soviet people and Soviet prisoners that Teutonic fury knew no bounds, in spite of a warning by Admiral Canaris that the treatment was in violation of international law.

We need not, therefore, for the purposes of the conspiracy Count, recite the revolting details of starving, beating, murdering, freezing, and mass extermination admittedly used against the Eastern soldiery. Also, we may take as established or admitted that the lawless conduct such as shooting British and American airmen, mistreatment of Western prisoners of war, forcing French prisoners of war into German war work, and other deliberate violations of the Hague and Geneva Conventions, did occur, and in obedience to highest levels of authority (R-110).

The fourth group of crimes is: Enslavement and Plunder of Populations in Occupied Countries.

The Defendant Sauckel, Plenipotentiary General for the Utilization of Labor (1666-PS), is authority for the statement that "out of 5,000,000 foreign workers who arrived in Germany, not even 200,000 came voluntarily" (R-124). It was officially reported to Defendant Rosenberg that in his territory "recruiting methods were used which probably have their origin in the blackest period of the slave trade" (294-PS). Sauckel himself reported that male and female agents went hunting for men, got them drunk, and "shanghaied" them to Germany (220-PS). These captives were shipped in trains without heat, food, or sanitary facilities. The dead were thrown out at stations, and the newborn were thrown out the windows of moving trains (054-PS).

Sauckel ordered that "all the men must be fed, sheltered, and treated in such a way as to exploit them to the highest possible

extent at the lowest conceivable degree of expenditure" (054-PS). About two million of these were employed directly in the manufacture of armaments and munitions (016-PS). The director of the Krupp locomotive factory in Essen complained to the company that Russian forced laborers were so underfed that they were too weakened to do their work (D-316), and the Krupp doctor confirmed their pitiable condition (D-288). Soviet workers were put in camps under Gestapo guards, who were allowed to punish disobedience by confinement in a concentration camp or by hanging on the spot (3040-PS).

Populations of occupied countries were otherwise exploited and oppressed unmercifully. Terror was the order of the day. Civilians were arrested without charges, committed without counsel, executed without hearing. Villages were destroyed, the male inhabitants shot or sent to concentration camps, the women sent to forced labor, and the children scattered abroad (3012-PS). The extent of the slaughter in Poland alone was indicated by Frank, who reported, and I quote:

> "If I wanted to have a poster put up for every seven Poles who were shot, the forests of Poland would not suffice for producing the paper for such posters" (2032-PS).

Those who will enslave men cannot be expected to refrain from plundering them. Boastful reports show how thoroughly and scientifically the resources of occupied lands were sucked into the German war economy, inflicting shortage, hunger, and inflation upon the inhabitants (EC-317). Besides this grand plan to aid the German war effort there were the sordid activities of the Rosenberg Einsatzstab, which pillaged art treasures for Göring and his fellow-bandits (014-PS). It is hard to say whether the spectacle of Germany's Number 2 leader urging his people to give up every comfort and strain every sinew on essential war work while he rushed around confiscating art by the trainload should be cast as tragedy or comedy. In either case it was a crime.

International law at all times before and during this war spoke with precision and authority respecting the protection due civilians of an occupied country and the slave trade and plunder of occupied countries was at all times flagrantly unlawful.

And the fifth group of crimes is: Persecution and Extermination of Jews and Christians.

The Nazi movement will be of evil memory in history because of its persecution of the Jews, the most far-flung and terrible racial persecution of all time. Although the Nazi Party neither invented nor monopolized anti-Semitism, its leaders from the very beginning embraced it, incited it, and exploited it. They used it as "the psychological spark that ignites the mob." After the seizure of power, it became an official state policy. The persecution began in a series of discriminatory laws eliminating the Jews from the civil service,

the professions, and economic life. As it became more intense it included segregation of Jews in ghettos, and exile. Riots were organized by Party leaders to loot Jewish business places and to burn synagogues. Jewish property was confiscated and a collective fine of a billion marks was imposed upon German Jewry. The program progressed in fury and irresponsibility to the "final solution." This consisted of sending all Jews who were fit to work to concentration camps as slave laborers, and all who were not fit, which included children under 12 and people over 50, as well as any others judged unfit by an SS doctor, to concentration camps for extermination (2605-PS).

Adolf Eichmann, the sinister figure who had charge of the extermination program, has estimated that the anti-Jewish activities resulted in the killing of 6 million Jews. Of these, 4 million were killed in extermination institutions, and 2 million were killed by Einsatzgruppen, mobile units of the Security Police and SD which pursued Jews in the ghettos and in their homes and slaughtered them by gas wagons, by mass shooting in antitank ditches and by every device which Nazi ingenuity could conceive. So thorough and uncompromising was this program that the Jews of Europe as a race no longer exist, thus fulfilling the diabolic "prophecy" of Adolf Hitler at the beginning of the war (2738-PS).

Of course, any such program must reckon with the opposition of the Christian Church. This was recognized from the very beginning. Defendant Bormann wrote all Gauleiters in 1941 that "National Socialism and Christian concepts are irreconcilable," and that the people must be separated from the churches and the influence of the churches totally removed (D-75). Defendant Rosenberg even wrote dreary treatises advocating a new and weird Nazi religion (2349-PS).

The Gestapo appointed "Church specialists" who were instructed that the ultimate aim was "destruction of the confessional churches" (1815-PS). The record is full of specific instances of the persecution of clergymen (1164-PS, 1521-PS, 848-PS, 849-PS), the confiscation of Church property (1481-PS), interference with religious publications (1498-PS), disruption of religious education (121-PS), and suppression of religious organizations (1481-PS, 1482-PS, R-145).

The chief instrumentality for persecution and extermination was the concentration camp, sired by the Defendant Göring and nurtured under the over-all authority of Defendants Frick and Kaltenbrunner.

The horrors of these iniquitous places have been vividly disclosed by documents (2309-PS, 3870-PS) and testified to by witnesses. The Tribunal must be satiated with ghastly verbal and pictorial

portrayals. From your records it is clear that the concentration camps were the first and worst weapon of Nazi oppression used by the National Socialist State, and that they were the primary means utilized for the persecution of the Christian Church and the extermination of the Jewish race. This has been admitted to you by some of the defendants from the witness stand. In the words of Defendant Frank: "A thousand years will pass and this guilt of Germany will still not be erased."

These, then, were the five great substantive crimes of the Nazi regime. Their commission, which cannot be denied, stands admitted. The Defendant Keitel, who is in a position to know the facts, has given the Tribunal what seems to be a fair summation of the case on the facts:

> "The defendant has declared that he admits the contents of the general Indictment to be proved from the objective and factual point of view (that is to say, not every individual case) and this in consideration of the law of procedure governing the Trial. It would be senseless, despite the possibility of refuting several documents or individual facts, to attempt to shake the Indictment as a whole."

I pass now to the inquiry as to whether these groups of criminal acts were integrated in a Common Plan or Conspiracy.

The Prosecution submits that these five categories of premeditated crimes were not separate and independent phenomena but that all were committed pursuant to a Common Plan or Conspiracy. The Defense admits that these classes of crimes were committed but denies that they are connected one with another as parts of a single program.

The central crime in this pattern of crimes, the kingpin which holds them all together, is the plot for aggressive wars. The chief reason for international cognizance of these crimes lies in this fact. Have we established the Plan or Conspiracy to make aggressive war?

Certain admitted or clearly proven facts help answer that question. First is the fact that such war of aggression did take place. Second, it is admitted that from the moment the Nazis came to power, every one of them and every one of the defendants worked like beavers to prepare for some war. The question therefore comes to this: Were they preparing for the war which did occur, or were they preparing for some war which never has happened? It is probably true that in their early days none of them had in mind what month of what year war would begin, the exact dispute which would precipitate it, or whether its first impact would be Austria, Czechoslovakia, or Poland. But I submit that the defendants either knew or were chargeable with knowledge that the war for which they were making ready would be a war of German aggression. This is partly because there was no real expectation that any power

or combination of powers would attack Germany. But it is chiefly because the inherent nature of the German plans was such that they were certain sooner or later to meet resistance and that they could then be accomplished only by aggression.

The plans of Adolf Hitler for aggression were just as secret as *Mein Kampf,* of which over six million copies were published in Germany. He not only openly advocated overthrowing the Treaty of Versailles, but made demands which went far beyond a mere rectification of its alleged injustices (GB-128). He avowed an intention to attack neighboring states and seize their lands, which he said would have to be won with "the power of a triumphant sword." Here, for every German to hearken to, were the "ancestral voices prophesying war."

Göring has testified in this courtroom that at his first meeting with Hitler, long before the seizure of power, quoting:

> "I noted that Hitler had a definite view of the impotency of protest and, as a second point, that he was of the opinion that Germany should be freed of the peace of Versailles. We did not say we shall have to have a war and defeat our enemies; this was the aim, and the methods had to be adapted to the political situation."

When asked if this goal were to be accomplished by war if necessary, Göring did not deny that eventuality but evaded a direct answer by saying, "We did not even debate about those things at that time." He went on to say that the aim to overthrow the Treaty of Versailles was open and notorious and that—I quote again—"every German in my opinion was for its modification, and there was no doubt that this was a strong inducement for joining the Party." Thus, there can be no possible excuse for any person who aided Hitler to get absolute power over the German people, or who took a part in his regime, to fail to know the nature of the demands he would make on Germany's neighbors.

Immediately after the seizure of power the Nazis went to work to implement these aggressive intentions by preparing for war. They first enlisted German industrialists in a secret rearmament program. Twenty days after the seizure of power Schacht was host to Hitler, Göring, and some 20 leading industrialists. Among them were Krupp von Bohlen of the great Krupp armament works and representatives of I. G. Farben and other Ruhr heavy industries. Hitler and Göring explained their program to the industrialists, who became so enthusiastic that they set about to raise 3 million Reichsmark to strengthen and confirm the Nazi Party in power (EC-433). Two months later Krupp was working to bring a reorganized association of German industry into agreement with the political aims of the Nazi Government (D-157). Krupp later boasted of the success in keeping the German war industries secretly alive

and in readiness despite the disarmament clauses of the Versailles Treaty, and recalled the industrialists' enthusiastic acceptance of "the great intentions of the Führer in the rearmament period of 1933-39" (D-317).

Some 2 months after Schacht had sponsored his first meeting to gain the support of the industrialists, the Nazis moved to harness industrial labor to their aggressive plans. In April 1933 Hitler ordered Dr. Ley "to take over the trade unions," numbering some six million members. By Party directive Ley seized the unions, their property and their funds. Union leaders, taken into "protective custody" by the SS and SA, were put into concentration camps (2283-PS, 2271-PS, 2335-PS, 2334-PS, 2928-PS, 2277-PS, 2332-PS, 2333-PS). The free labor unions were then replaced by a Nazi organization known as the German Labor Front, with Dr. Ley at its head. It was expanded until it controlled over 23 million members (2275-PS). Collective bargaining was eliminated, the voice of labor could no longer be heard as to working conditions, and the labor contract was prescribed by "trustees of labor" appointed by Hitler (405-PS). The war purpose of this labor program was clearly acknowledged by Robert Ley 5 days after war broke out, when he declared in a speech that:

> "We National Socialists have monopolized all resources and all our energies during the past 7 years so as to be able to be equipped for the supreme effort of battle" (1939-PS).

The Nazis also proceeded at once to adapt the Government to the needs of war. In April 1933 the Cabinet formed a Defense Council, the working committee of which met frequently thereafter. In the meeting of 23 May 1933 at which Defendant Keitel presided, the members were instructed that:

> "No document must be lost since otherwise the enemy propaganda would make use of it. Matters communicated orally cannot be proven; they can be denied by us in Geneva" (EC-177).

In January 1934—and, Your Honors, dates in this connection are important—with Defendant Jodl present, the Council planned a mobilization calendar and mobilization order for some 240,000 industrial plants. Again it was agreed that nothing should be in writing so that "the military purpose may not be traceable" (EC-404).

On 21 May 1935, the top secret Reich Defense Law was enacted. Defendant Schacht was appointed Plenipotentiary for War Economy with the task of secretly preparing all economic forces for war and, in the event of mobilization, of financing the war (2261-PS).

Schacht's secret efforts were supplemented in October 1936 by the appointment of Defendant Göring as commissioner of the Four Year Plan, with the duty of putting the entire economy in a state of readiness for war within 4 years (EC-408).

A secret program for the accumulation of the raw materials and foreign credits necessary for extensive rearmament was also set on foot immediately upon seizure of power. In September of 1934, the Minister of Economics was already complaining that:

> "The task of stockpiling is being hampered by the lack of foreign currency; the need for secrecy and camouflage also is a retarding influence" (EC-128).

Foreign currency controls were at once established. Financing was delegated to the wizard Schacht, who conjured up the mefo bill to serve the dual objectives of tapping the short-term money market for rearmament purposes while concealing the amount of these expenditures (EC-436).

The spirit of the whole Nazi administration was summed up by Göring at a meeting of the Council of Ministers, which included Schacht, on 27 May 1936, when he said,

> "All measures are to be considered from the standpoint of an assured waging of war" (1301-PS).

The General Staff, of course, also had to be enlisted in the war plan. Most of the generals, attracted by the prospect of rebuilding their armies, became willing accomplices. The hold-over Minister of War Von Blomberg and the Chief of Staff General Von Fritsch, however, were not cordial to the increasingly belligerent policy of the Hitler regime, and by vicious and obscene plotting they were discredited and removed in January 1938. Thereupon, Hitler assumed for himself Supreme Command of the Armed Forces and the positions of Blomberg and of Von Fritsch were filled by others who became, as Blomberg said of Keitel, "a willing tool in Hitler's hands for every one of his decisions." The generals did not confine their participation to merely military matters. They participated in all major diplomatic and political maneuvers, such as the Obersalzberg meeting where Hitler, flanked by Keitel and other top generals, issued his virtual ultimatum to Schuschnigg (1780-PS).

As early as 5 November 1937 the plan to attack had begun to take definiteness as to time and victim. In a meeting which included the Defendants Raeder, Göring, and Von Neurath, Hitler stated the cynical objective: "The question for Germany is where the greatest possible conquest could be made at the lowest possible cost." He discussed various plans for the invasion of Austria and Czechoslovakia, indicating clearly that he was thinking of these territories not as ends in themselves, but as means for further conquest. He pointed out that considerable military and political assistance could be afforded by possession of these lands and discussed the possibility of constituting from them new armies up to a strength of about 12 divisions. The aim he stated boldly and baldly as the acquisition of additional living space in Europe, and recognized

that "the German question can be solved only by way of force" (386-PS).

Six months later, emboldened by the bloodless Austrian conquest, Hitler, in a secret directive to Keitel, stated his "unalterable decision to smash Czechoslovakia by military action in the near future" (388-PS).

On the same day, Jodl noted in his diary that the Führer had stated his final decision to destroy Czechoslovakia soon and had initiated military preparations all along the line (1780-PS). By April the plan had been perfected to attack Czechoslovakia "with lightning swift action as the result of an incident" (388-PS).

All along the line preparations became more definite for a war of expansion on the assumption that it would result in a world-wide conflict. In September 1938 Admiral Carls officially commented on a "Draft Study of Naval Warfare against England":

"There is full agreement with the main theme of the study.

"1. If according to the Führer's decision Germany is to acquire a position as a world power, she needs not only sufficient colonial possessions but also secure naval communications and secure access to the ocean.

"2. Both requirements can only be fulfilled in opposition to Anglo-French interests and will limit their positions as world powers. It is unlikely that they can be achieved by peaceful means. The decision to make Germany a world power therefore forces upon us the necessity of making the corresponding preparations for war.

"3. War against England means at the same time war against the Empire, against France, probably against Russia as well, and a large number of countries overseas; in fact, against one-half to one-third of the whole world.

"It can only be justified and have a chance of success if it is prepared economically as well as politically and militarily and waged with the aim of conquering for Germany an outlet to the ocean" (C-23).

This Tribunal knows what categorical assurances were given to an alarmed world after the Anschluss, after Munich, after the occupation of Bohemia and Moravia, that German ambitions were realized and that Hitler had "no further territorial demands to make in Europe." The record of this Trial shows that those promises were calculated deceptions and that those high in the bloody brotherhood of Nazidom knew it.

As early as 15 April 1938 Göring pointed out to Mussolini and Ciano that the possession of those territories would make possible an attack on Poland (1874-PS). Ribbentrop's Ministry on 26 August 1938 was writing:

"After the settlement of the Czechoslovakian question, it will be generally assumed that Poland will be next in turn" (TC-76).

Hitler, after the Polish invasion, boasted that it was the Austrian and Czechoslovakian triumphs by which "the basis for the action against Poland was laid" (789-PS). Göring suited the act to the purpose and gave immediate instructions to exploit for the further strengthening of the German war potential, first the Sudetenland, and then the whole Protectorate (R-133).

By May of 1939 the Nazi preparations had ripened to the point that Hitler confided to the Defendants Göring, Raeder, Keitel, and others his readiness "to attack Poland at the first suitable opportunity," even though he recognized that "further successes cannot be attained without the shedding of blood." The larcenous motives behind this decision he made plain in words that echoed the covetous theme of *Mein Kampf:*

"Circumstances must be adapted to aims. This is impossible without invasion of foreign states or attacks upon foreign property. Living space in proportion to the magnitude of the state is the basis of all power—further successes cannot be attained without expanding our living space in the East . . ." (L-79).

While a credulous world slumbered, snugly blanketed with perfidious assurances of peaceful intentions, the Nazis prepared not as before for a war but now for the war. The Defendants Göring, Keitel, Raeder, Frick, and Funk, with others, met as the Reich Defense Council in June of 1939. The minutes, authenticated by Göring, are revealing evidences of the way in which each step of Nazi planning dovetailed with every other. These five key defendants, 3 months before the first Panzer unit had knifed into Poland, were laying plans for "employment of the population in wartime," and had gone so far as to classify industry for priority in labor supply after "5 million servicemen had been called up." They decided upon measures to avoid "confusion when mobilization takes place," and declared a purpose "to gain and maintain the lead in the decisive initial weeks of a war." They then planned to use in production prisoners of war, criminal prisoners, and concentration camp inmates. They then decided on "compulsory work for women in wartime." They had already passed on applications from 1,172,000 specialist workmen for classification as indispensable, and had approved 727,000 of them. They boasted that orders to workers to report for duty "are ready and tied up in bundles at the labor offices." And they resolved to increase the industrial manpower supply by bringing into Germany "hundreds of thousands of workers" from the Protectorate to be "housed together in hutments" (3787-PS).

It is the minutes of this significant conclave of many key defendants which disclose how the plan to start the war was coupled with the plan to wage the war through the use of illegal sources of labor to maintain production. Hitler, in announcing his plan to attack Poland, had already foreshadowed the slave-labor program as one of its corollaries when he cryptically pointed out to the Defendants Göring, Raeder, Keitel, and others that the Polish population "will be available as a source of labor" (L-79). This was part of the plan made good by Frank, who as Governor General notified Göring that he would supply "at least one million male and female agricultural and industrial workers to the Reich" (1374-PS), and by Sauckel, whose impressments throughout occupied territory aggregated numbers equal to the total population of some of the smaller nations of Europe.

Here also comes to the surface the link between war labor and concentration camps, a manpower source that was increasingly used and with increasing cruelty. An agreement between Himmler and the Minister of Justice Thierack in 1942 provided for "the delivery of antisocial elements from the execution of their sentence to the Reichsführer SS to be worked to death" (654-PS). An SS directive provided that bedridden prisoners be drafted for work to be performed in bed (1395-PS). The Gestapo ordered 46,000 Jews arrested to increase the "recruitment of manpower into the concentration camps" (1472-PS). One hundred thousand Jews were brought from Hungary to augment the camps' manpower (R-124). On the initiative of the Defendant Dönitz, concentration camp labor was used in the construction of submarines (C-195). Concentration camps were thus geared into war production on the one hand, and into the administration of justice and the political aims of the Nazis on the other.

The use of prisoner-of-war labor as then planned in that meeting also grew with German needs. At a time when every German soldier was needed at the front and forces were not available at home, Russian prisoners of war were forced to man anti-aircraft guns against Allied planes. Field Marshal Milch reflected the Nazi merriment at this flagrant violation of international law, saying: "... this is an amusing thing, that the Russians must work the guns" (R-124).

The orders for the treatment of Soviet prisoners of war were so ruthless that Admiral Canaris, pointing out that they would "result in arbitrary mistreatments and killing," protested to the OKW against them as breaches of international law. The reply of Keitel was unambiguous. He said:

> "The objections arise from the military conception of chivalrous warfare! This is the destruction of an ideology! Therefore, I approve and back the measures" (C-338).

The Geneva Convention would have been thrown overboard openly except that Jodl objected because he wanted the benefits of Allied observance of it while it was not being allowed to hamper the Germans in any way.

Other crimes in the conduct of warfare were planned with equal thoroughness as a means of insuring victory of German arms. In October 1938, almost a year before the start of the war, the large-scale violation of the established rules of warfare was contemplated as a policy, and the Supreme Command circulated a "most secret" list of devious explanations to be given by the Propaganda Minister in such cases (C-2). Even before this time commanders of the Armed Forces were instructed to employ any means of warfare so long as it facilitated victory (L-211). After the war was in progress the orders increased in savagery. A typical Keitel order, demanding the use of the "most brutal means," provided that: "... It is the duty of the troops to use all means without restriction, even against women and children, so long as it insures success."

The German naval forces were no more immune from the infection than the land forces. Raeder ordered violations of the accepted rules of warfare wherever necessary to gain strategic successes (C-157). Dönitz urged his submarine crews not to rescue survivors of torpedoed enemy ships in order to cripple merchant shipping of the Allied Nations by decimating their crews (D-642).

Thus, the war crimes against Allied forces and the crimes against humanity committed in occupied territories are incontestably part of the program for making the war because, in the German calculations, they were indispensable to its hope of success.

Similarly, the whole group of prewar crimes, including the persecutions within Germany, fall into place around the plan for aggressive war like stones in a finely wrought mosaic. Nowhere is the whole catalog of crimes of Nazi oppression and terrorism within Germany so well integrated with the crime of war as in that strange mixture of wind and wisdom which makes up the testimony of Hermann Göring. In describing the aims of the Nazi program before the seizure of power, Göring said:

> "The first question was to achieve and establish a different political structure for Germany which would enable Germany to obtain against the dictate (of Versailles) not only a protest, but an objection of such a nature that it would actually be considered."

With these purposes, Göring admitted that the plan was made to overthrow the Weimar Republic, to seize power, and to carry out the Nazi program by whatever means were necessary, whether legal or illegal.

From Göring's cross-examination we learn how necessarily the whole program of crime followed. Because they considered a

strong state necessary to get rid of the Versailles Treaty, they adopted the Führerprinzip. Having seized power, the Nazis thought it necessary to protect it by abolishing parliamentary government and suppressing all organized opposition from political parties (L-83). This was reflected in the philosophy of Göring that the opera was more important than the Reichstag. Even the "opposition of each individual was not tolerated unless it was a matter of unimportance." To insure the suppression of opposition a secret police force was necessary. In order to eliminate incorrigible opponents, it was necessary to establish concentration camps and to resort to the device of protective custody. Protective custody, Göring testified, meant that:

> "People were arrested and taken into protective custody who had committed no crime but who one might expect, if they remained in freedom, would do all sorts of things to damage the German State."

The same war purpose was dominant in the persecution of the Jews. In the beginning, fanaticism and political opportunism played a principal part, for anti-Semitism and its allied scapegoat, mythology, was a vehicle on which the Nazis rode to power. It was for this reason that the filthy Streicher and the blasphemous Rosenberg were welcomed at Party rallies and made leaders and officials of the State or Party. But the Nazis soon regarded the Jews as foremost among the opposition to the police state with which they planned to put forward their plans of military aggression. Fear of their pacifism and their opposition to strident nationalism was given as the reason that the Jews had to be driven from the political and economic life of Germany. Accordingly, they were transported like cattle to the concentration camps, where they were utilized as a source of forced labor for war purposes.

At a meeting held on 12 November 1938, 2 days after the violent anti-Jewish pogroms instigated by Goebbels and carried out by the Party Leadership Corps and the SA, the program for the elimination of Jews from the German economy was mapped out by Göring, Funk, Heydrich, Goebbels, and the other top Nazis. The measures adopted included confinement of the Jews in ghettos, cutting off their food supply, "Aryanizing" their shops, and restricting their freedom of movement (1816-PS). Here another purpose behind the Jewish persecutions crept in, for it was the wholesale confiscation of their property which helped finance German rearmament. Although Schacht's plan to have foreign money ransom the entire race within Germany was not adopted, the Jews were stripped to the point where Göring was able to advise the Reich Defense Council that the critical situation of the Reich exchequer, due to rearmament, had been relieved "through the billion Reichsmark fine imposed on

Jewry, and through profits accrued to the Reich in the Aryanization of Jewish enterprises" (3575-PS).

A glance over the dock will show that, despite quarrels among themselves, each defendant played a part which fitted in with every other, and that all advanced the common plan. It contradicts experience that men of such diverse backgrounds and talents should so forward each other's aims by coincidence.

The large and varied role of Göring was half militarist and half gangster. He stuck his pudgy finger in every pie. He used his SA musclemen to help bring the gang into power. In order to entrench that power he contrived to have the Reichstag burned, established the Gestapo, and created the concentration camps. He was equally adept at massacring opponents and at framing scandals to get rid of stubborn generals. He built up the Luftwaffe and hurled it at his defenseless neighbors. He was among the foremost in harrying Jews out of the land. By mobilizing the total economic resources of Germany he made possible the waging of the war which he had taken a large part in planning. He was, next to Hitler, the man who tied the activities of all the defendants together in a common effort.

The parts played by the other defendants, although less comprehensive and less spectacular than that of the Reichsmarshal, were nevertheless integral and necessary contributions to the joint undertaking, without any one of which the success of the common enterprise would have been in jeopardy. There are many specific deeds of which these men have been proven guilty. No purpose would be served—nor indeed is time available—to review all the crimes which the evidence has charged up to their names. Nevertheless, in viewing the conspiracy as a whole and as an operating mechanism, it may be well to recall briefly the outstanding services which each of the men in the dock rendered to the common cause.

THE PRESIDENT: Would that be a convenient time to adjourn?

MR. JUSTICE JACKSON: Entirely, Your Honor.

[A recess was taken.]

The zealot Hess, before succumbing to wanderlust, was the engineer tending the Party machinery, passing orders and propaganda down to the Leadership Corps, supervising every aspect of Party activities, and maintaining the organization as a loyal and ready instrument of power. When apprehensions abroad threatened the success of the Nazi regime for conquest, it was the duplicitous Ribbentrop, the salesman of deception, who was detailed to pour wine on the troubled waters of suspicion by preaching the gospel of limited and peaceful intentions. Keitel, the weak and willing tool,

delivered the Armed Forces, the instrument of aggression, over to the Party and directed them in executing its felonous designs.

Kaltenbrunner, the grand inquisitor, took up the bloody mantle of Heydrich to stifle opposition and terrorize compliance, and buttressed the power of National Socialism on a foundation of guiltless corpses. It was Rosenberg, the intellectual high priest of the "master race," who provided the doctrine of hatred which gave the impetus for the annihilation of Jewry, and who put his infidel theories into practice against the Eastern Occupied Territories. His woolly philosophy also added boredom to the long list of Nazi atrocities. The fanatical Frank, who solidified Nazi control by establishing the new order of authority without law, so that the will of the Party was the only test of legality, proceeded to export his lawlessness to Poland, which he governed with the lash of Caesar and whose population he reduced to sorrowing remnants. Frick, the ruthless organizer, helped the Party to seize power, supervised the police agencies to insure that it stayed in power, and chained the economy of Bohemia and Moravia to the German war machine.

Streicher, the venomous vulgarian, manufactured and distributed obscene racial libels which incited the populace to accept and assist the progressively savage operations of "race purification." As Minister of Economics Funk accelerated the pace of rearmament, and as Reichsbank president banked for the SS the gold teeth fillings of concentration camp victims—probably the most ghoulish collateral in banking history. It was Schacht, the façade of starched respectability, who in the early days provided the window dressing, the bait for the hesitant, and whose wizardry later made it possible for Hitler to finance the colossal rearmament program, and to do it secretly.

Dönitz, Hitler's legatee of defeat, promoted the success of the Nazi aggressions by instructing his pack of submarine killers to conduct warfare at sea with the illegal ferocity of the jungle. Raeder, the political admiral, stealthily built up the German Navy in defiance of the Versailles Treaty, and then put it to use in a series of aggressions which he had taken a leading part in planning. Von Schirach, poisoner of a generation, initiated the German youth in Nazi doctrine, trained them in legions for service in the SS and Wehrmacht, and delivered them up to the Party as fanatic, unquestioning executors of its will.

Sauckel, the greatest and cruelest slaver since the Pharaohs of Egypt, produced desperately needed manpower by driving foreign peoples into the land of bondage on a scale unknown even in the ancient days of tyranny in the kingdom of the Nile. Jodl, betrayer of the traditions of his profession, led the Wehrmacht in violating its own code of military honor in order to carry out the barbarous aims of Nazi policy. Von Papen, pious agent of an infidel regime,

held the stirrup while Hitler vaulted into the saddle, lubricated the Austrian annexation, and devoted his diplomatic cunning to the service of Nazi objectives abroad.

Seyss-Inquart, spearhead of the Austrian fifth column, took over the government of his own country only to make a present of it to Hitler, and then, moving north, brought terror and oppression to the Netherlands and pillaged its economy for the benefit of the German juggernaut. Von Neurath, the old-school diplomat, who cast the pearls of his experience before Nazis, guided Nazi diplomacy in the early years, soothed the fears of prospective victims, and, as Reich Protector of Bohemia and Moravia, strengthened the German position for the coming attack on Poland. Speer, as Minister of Armaments and Production, joined in planning and executing the program to dragoon prisoners of war and foreign workers into German war industries, which waxed in output while the laborers waned in starvation. Fritzsche, radio propaganda chief, by manipulation of the truth goaded German public opinion into frenzied support of the regime and anesthetized the independent judgment of the population so that they did without question their masters' bidding. And Bormann, who has not accepted our invitation to this reunion, sat at the throttle of the vast and powerful engine of the Party, guiding it in the ruthless execution of Nazi policies, from the scourging of the Christian Church to the lynching of captive Allied airmen.

The activities of all these defendants, despite their varied backgrounds and talents, were joined with the efforts of other conspirators not now in the dock, who played still other essential roles. They blend together into one consistent and militant pattern animated by a common objective to reshape the map of Europe by force of arms. Some of these defendants were ardent members of the Nazi movement from its birth. Others, less fanatical, joined the common enterprise later, after success had made participation attractive by the promise of rewards. This group of latter-day converts remedied a crucial defect in the ranks of the original true believers, for as Dr. Siemers has pointed out in his summation:

> "... There were no specialists among the National Socialists for the particular tasks. Most of the National Socialist collaborators did not previously follow a trade requiring technical education."

It was the fatal weakness of the early Nazi band that it lacked technical competence. It could not from among its own ranks make up a government capable of carrying out all the projects necessary to realize its aims. Therein lies the special crime and betrayal of men like Schacht and Von Neurath, Speer and Von Papen, Raeder and Dönitz, Keitel and Jodl. It is doubtful whether the Nazi master plan could have succeeded without their specialized intelligence

which they so willingly put at its command. They did so with knowledge of its announced aims and methods, and continued their services after practice had confirmed the direction in which they were tending. Their superiority to the average run of Nazi mediocrity is not their excuse. It is their condemnation.

The dominant fact which stands out from all the thousands of pages of the record of this Trial is that the central crime of the whole group of Nazi crimes—the attack on the peace of the world—was clearly and deliberately planned. The beginning of these wars of aggression was not an unprepared and spontaneous springing to arms by a population excited by some current indignation. A week before the invasion of Poland Hitler told his military commanders:

> "I shall give a propagandist cause for starting war—never mind whether it be plausible or not. The victor shall not be asked later on whether we told the truth or not. In starting and making a war, it is not the right that matters, but victory (1014-PS).

The propagandist incident was duly provided by dressing concentration camp inmates in Polish uniforms, in order to create the appearance of a Polish attack on a German frontier radio station (2751-PS). The plan to occupy Belgium, Holland, and Luxembourg first appeared as early as August 1938 in connection with the plan for attack on Czechoslovakia (375-PS). The intention to attack became a program in May 1939, when Hitler told his commanders that "the Dutch and Belgian air bases must be occupied by armed forces. Declarations of neutrality must be ignored" (L-79).

Thus, the follow-up wars were planned before the first was launched. These were the most carefully plotted wars in all history. Scarcely a step in their terrifying succession and progress failed to move according to the master blueprint or the subsidiary schedules and timetables until long after the crimes of aggression were consummated.

Nor were the war crimes and the crimes against humanity unplanned, isolated, or spontaneous offenses. Aside from our undeniable evidence of their plotting, it is sufficient to ask whether 6 million people could be separated from the population of several nations on the basis of their blood and birth, could be destroyed and their bodies disposed of, except that the operation fitted into the general scheme of government. Could the enslavement of 5 millions of laborers, their impressment into service, their transportation to Germany, their allocation to work where they would be most useful, their maintenance, if slow starvation can be called maintenance, and their guarding have been accomplished if it did not fit into the common plan? Could hundreds of concentration camps located throughout Germany, built to accommodate hundreds of thousands of victims, and each requiring labor and materials for construction,

manpower to operate and supervise, and close gearing into the economy—could such efforts have been expended under German autocracy if they had not suited the plan? Has the Teutonic passion for organization suddenly become famous for its toleration of nonconforming activity? Each part of the plan fitted into every other. The slave-labor program meshed with the needs of industry and agriculture, and these in turn synchronized with the military machine. The elaborate propaganda apparatus geared with the program to dominate the people and incite them to a war their sons would have to fight. The armament industries were fed by the concentration camps. The concentration camps were fed by the Gestapo. The Gestapo was fed by the spy system of the Nazi Party. Nothing was permitted under the Nazi iron rule that was not in accordance with the program. Everything of consequence that took place in this regimented society was but a manifestation of a premeditated and unfolding purpose to secure the Nazi State a place in the sun by casting all others into darkness.

The defendants meet this overwhelming case, some by admitting a limited responsibility, some by putting the blame on others, and some by taking the position in effect that while there have been enormous crimes there are no criminals. Time will not permit me to examine each individual and particular defense, but there are certain lines of defense common to so many cases that they deserve some consideration.

Counsel for many of the defendants seek to dismiss the conspiracy or common planning charge on the ground that the pattern of the Nazi plan does not fit into the concept of conspiracy applicable in German law to the plotting of a highway robbery or a burglary. Their concept of conspiracy is in the terms of a stealthy meeting in the dead of night, in a secluded hideout, in which a small group of felons plot every detail of a specific crime. The Charter forestalls resort to such parochial and narrow concepts of conspiracy taken from local law by using the additional and nontechnical term, "common plan." Omitting entirely the alternative term of "conspiracy," the Charter reads that "leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan to commit any of the described crimes are responsible for all acts performed by any persons in execution of such plan."

The Charter concept of a common plan really represents the conspiracy principle in an international context. A common plan or conspiracy to seize the machinery of a state, to commit crimes against the peace of the world, to blot a race out of existence, to enslave millions, and to subjugate and loot whole nations cannot be thought of in the same terms as the plotting of petty crimes, although the same underlying principles are applicable. Little gangsters may plan which will carry a pistol and which a stiletto, who

will approach a victim from the front and who from behind, and where they will waylay him. But in planning a war, the pistol becomes a Wehrmacht, the stiletto, a Luftwaffe. Where to strike is not a choice of dark alleys, but a matter of world geography. The operation involves the manipulation of public opinion, the law of the state, the police power, industry, and finance. The baits and bluffs must be translated into a nation's foreign policy. Likewise, the degree of stealth which points to a guilty purpose in a conspiracy will depend upon its object. The clandestine preparations of a state against international society, although camouflaged to those abroad, might be quite open and notorious among its own people. But stealth is not an essential ingredient of such planning. Parts of the common plan may be proclaimed from the housetops, as anti-Semitism was, and parts of it kept under cover as rearmament for a long time was. It is a matter of strategy how much of the preparation shall be made public, as was Göring's announcement in 1935 of the creation of an air force, and how much shall be kept covert, as in the case of the Nazis' use of shovels to teach "labor corps" the manual of arms (3054-PS). The forms of this grand type of conspiracy are amorphous, the means are opportunistic, and neither can divert the law from getting at the substance of things.

The defendants contend, however, that there could be no conspiracy involving aggressive war because: (1) None of the Nazis wanted war; (2) rearmament was only intended to provide the strength to make Germany's voice heard in the family of nations; and (3) the wars were not in fact aggressive wars but were defensive against a "Bolshevik menace."

When we analyze the argument that the Nazis did not want war it comes down, in substance, to this: "The record looks bad indeed—objectively—but when you consider the state of my mind—subjectively I hated war. I knew the horrors of war. I wanted peace." I am not so sure of this. I am even less willing to accept Göring's description of the General Staff as pacifist. However, it will not injure our case to admit that as an abstract proposition none of these defendants liked war. But they wanted things which they knew they could not get without war. They wanted their neighbors' lands and goods. Their philosophy seems to be that if the neighbors would not acquiesce, then they are the aggressors and are to blame for the war. The fact is, however, that war never became terrible to the Nazis until it came home to them, until it exposed their deceptive assurances to the German people that German cities, like the ruined one in which we meet, would be invulnerable. From then on, war was terrible.

But again the defendants claim, "To be sure, we were building guns. But not to shoot. They were only to give us weight in negotiating." At its best this argument amounts to a contention that the

military forces were intended for blackmail, not for battle. The threat of military invasion which forced the Austrian Anschluss, the threats which preceded Munich, and Göring's threat to bomb the beautiful city of Prague if the President of Czechoslovakia did not consent to a Protectorate, are examples of what the defendants have in mind when they talk of arming to back negotiation.

But from the very nature of German demands, the day was bound to come when some country would refuse to buy its peace, would refuse to pay danegelt, "for the end of that game is oppression and shame, and the nation that plays it is lost."

Did these defendants then intend to withdraw German demands, or was Germany to enforce them and manipulate propaganda so as to place the blame for the war on the nation so unreasonable as to resist? Events have answered that question, and documents such as Admiral Carl's memorandum, earlier quoted, leave no doubt that the events occurred as anticipated.

But some of the defendants argue that the wars were not aggressive and were only intended to protect Germany against some eventual danger from the "menace of Communism," which was something of an obsession with many Nazis.

At the outset this argument of self-defense falls because it completely ignores this damning combination of facts clearly established in the record: First, the enormous and rapid German preparations for war; second, the repeatedly avowed intentions of the German leaders to attack, which I have previously cited; and third, the fact that a series of wars occurred in which German forces struck the first blows, without warning, across the borders of other nations.

Even if it could be shown—which it cannot—that the Russian war was really defensive, such is demonstrably not the case with those wars which preceded it. It may also be pointed out that even those who would have you believe that Germany was menaced by Communism also compete with each other in describing their opposition to the disastrous Russian venture. Is it reasonable that they would have opposed that war if it were undertaken in good-faith self-defense?

The frivolous character of the self-defense theory on the facts it is sought to compensate, as advocates often do, by resort to a theory of law. Dr. Jahrreiss, in his scholarly argument for the Defense, rightly points out that no treaty provision and no principle of law denied Germany, as a sovereign nation, the right of self-defense. He follows with the assertion for which there is authority in classic international law, that "... every state is alone judge of whether in a given case it is waging a war of self-defense."

It is not necessary to examine the validity of an abstract principle which does not apply to the facts of our case. I do not doubt

that if a nation arrived at a judgment that it must resort to war in self-defense, because of conditions affording reasonable grounds for such an honest judgment, any tribunal would accord it great and perhaps conclusive weight, even if later events proved that judgment mistaken. But the facts in this case call for no such deference to honest judgment because no such judgment was ever pretended, much less honestly made.

In all the documents which disclose the planning and rationalization of these attacks, not one sentence has been or can be cited to show a good-faith fear of attack. It may be that statesmen of other nations lacked the courage forthrightly and fully to disarm. Perhaps they suspected the secret rearmament of Germany. But if they hesitated to abandon arms, they did not hesitate to neglect them. Germany well knew that her former enemies had allowed their armaments to fall into decay, so little did they contemplate another war. Germany faced a Europe that not only was unwilling to attack, but was too weak and pacifist even adequately to defend, and went to the very verge of dishonor, if not beyond, to buy its peace. The minutes we have shown you of the Nazis' secret conclaves identify no potential attacker. They bristle with the spirit of aggression and not of defense. They contemplate always territorial expansion, not the maintenance of territorial integrity.

Minister of War Von Blomberg, in his 1937 directive prescribing general principles for the preparation for war of the Armed Forces, has given the lie to these feeble claims of self-defense. He stated at that time:

> "The general political situation justifies the supposition that Germany need not consider an attack on any side. Grounds for this are, in addition to the lack of desire for war in almost all nations, particularly the Western Powers, the deficiencies in the preparedness for war in a number of states and of Russia in particular."

Nevertheless, he recommended:

> ". . . a continuous preparation for war in order to (a) counter-attack at any time, and (b) to enable the military exploitation of politically favorable opportunities should they occur" (C-175).

If these defendants may now cynically plead self-defense, although no good-faith need of self-defense was asserted or contemplated by any responsible leader at that time, it reduces non-aggression treaties to a legal absurdity. They become additional instruments of deception in the hands of the aggressor, and traps for well-meaning nations. If there be in nonaggression pacts an implied condition that each nation may make a *bona fide* judgment as to the necessity for self-defense against imminent threatened

attack, it certainly cannot be invoked to shelter those who never made any such judgment at all.

In opening this case I ventured to predict that there would be no serious denial that the crimes charged were committed, and that the issue would concern the responsibility of particular defendants. The defendants have fulfilled that prophecy. Generally, they do not deny that these things happened, but it is contended that they "just happened," and that they were not the result of a common plan or conspiracy.

One of the chief reasons the defendants say there was no conspiracy is the argument that conspiracy was impossible with a dictator. The argument runs that they all had to obey Hitler's orders, which had the force of law in the German State, and hence obedience could not be made the basis of an original charge. In this way it is explained that while there have been wholesale killings, there have been no murderers.

This argument is an effort to evade Article 8 of the Charter, which provides that the order of the Government or of a superior shall not free a defendant from responsibility but can only be considered in mitigation. This provision of the Charter corresponds with the justice and with the realities of the situation, as indicated in Defendant Speer's description of what he considered to be the common responsibility of the leaders of the German nation:

> "... with reference to utterly decisive matters, there is total responsibility. There must be total responsibility insofar as a person is one of the leaders, because who else could assume responsibility for the development of events, if not the immediate associates who work with and around the head of the State?"

Again he told the Tribunal:

> "... it is impossible after the catastrophe to evade this total responsibility. If the war had been won, the leaders would also have assumed total responsibility."

Like much of Defense Counsel's abstract arguments, the contention that the absolute power of Hitler precluded a conspiracy crumbles in the face of the facts of record. The Führerprinzip of absolutism was itself a part of the common plan, as Göring has pointed out. The defendants may have become the slaves of a dictator, but he was their dictator. To make him such was, as Göring has testified, the object of the Nazi movement from the beginning. Every Nazi took this oath:

> "I pledge eternal allegiance to Adolf Hitler. I pledge unconditional obedience to him and the Führers appointed by him" 1893-PS).

Moreover, they forced everybody else in their power to take it. This oath was illegal under German law, which made it criminal to become a member of an organization in which obedience to "unknown superiors or unconditional obedience to known superiors is pledged." These men destroyed free government in Germany and now plead to be excused from responsibility because they became slaves. They are in the position of the fictional boy who murdered his father and mother and then pleaded for leniency because he was an orphan.

What these men have overlooked is that Adolf Hitler's acts are their acts. It was these men among millions of others, and it was these men leading millions of others, who built up Adolf Hitler and vested in his psychopathic personality not only innumerable lesser decisions but the supreme issue of war or peace. They intoxicated him with power and adulation. They fed his hates and aroused his fears. They put a loaded gun in his eager hands. It was left to Hitler to pull the trigger, and when he did they all at that time approved. His guilt stands admitted, by some defendants reluctantly, by some vindictively. But his guilt is the guilt of the whole dock, and of every man in it.

But it is urged that these defendants could not be in agreement on a common plan or in a conspiracy because they were fighting among themselves or belonged to different factions or cliques. Of course, it is not necessary that men should agree on everything in order to agree on enough things to make them liable for a criminal conspiracy. Unquestionably there were conspiracies within the conspiracy, and intrigues and rivalries and battles for power. Schacht and Göring disagreed, but over which of them should control the economy, not over whether the economy should be regimented for war. Göring claims to have departed from the plan because through Dahlerus he conducted some negotiations with men of influence in England just before the Polish war. But it is perfectly clear that this was not an effort to prevent aggression against Poland but to make that aggression successful and safe by obtaining English neutrality (TC-90). Rosenberg and Göring may have had some differences as to how stolen art should be distributed but they had none about how it should be stolen. Jodl and Göring may have disagreed about whether to denounce the Geneva Convention, but they have never disagreed about violating it. And so it goes through the whole long and sordid story. Nowhere do we find a single instance where any one of the defendants stood up against the rest and said: "This thing is wrong and I will not go along with it." Wherever they differed, their differences were as to method or disputes over jurisdiction, but always within the framework of the common plan.

Some of the defendants also contend that in any event there was no conspiracy to commit war crimes or crimes against humanity because cabinet members never met with the military to plan these acts. But these crimes were only the inevitable and incidental results of the plan to commit the aggression for Lebensraum purposes. Hitler stated, at a conference with his commanders, that:

> "The main objective in Poland is the destruction of the enemy and not the reaching of a certain geographical line" (1014-PS).

Frank picked up the tune and suggested that when their usefulness was exhausted,

> "... then, for all I care, mincemeat can be made of the Poles and Ukrainians and all the others who run around here—it does not matter what happens" (2233-PS).

Reichskommissar Koch in the Ukraine echoed the refrain: "I will draw the very last out of this country. I did not come to spread bliss ..." (1130-PS).

This was Lebensraum on its seamy side. Could men of their practical intelligence expect to get neighboring lands free from the claims of their tenants without committing crimes against humanity?

The last stand of each defendant is that even if there was a conspiracy, he was not in it. It is therefore important in examining their attempts at avoidance of responsibility to know, first of all, just what it is that a conspiracy charge comprehends and punishes.

In conspiracy we do not punish one man for another man's crime. We seek to punish each for his own crime of joining a common criminal plan in which others also participated. The measure of the criminality of the plan and therefore of the guilt of each participant is, of course, the sum total of crimes committed by all in executing the plan. But the gist of the offense is participation in the formulation or execution of the plan. These are rules which every society has found necessary in order to reach men, like these defendants, who never get blood on their own hands but who lay plans that result in the shedding of blood. All over Germany today, in every zone of occupation, little men who carried out these criminal policies under orders are being convicted and punished. It would present a vast and unforgivable caricature of justice if the men who planned these policies and directed these little men should escape all penalty.

These men in this dock, on the face of this record, were not strangers to this program of crime, nor was their connection with it remote or obscure. We find them in the very heart of it. The positions they held show that we have chosen defendants of self-evident responsibility. They are the very top surviving authorities

in their respective fields and in the Nazi State. No one lives who, at least until the very last moments of the war, outranked Göring in position, power, and influence. No soldier stood above Keitel and Jodl, and no sailor above Raeder and Dönitz. Who can be responsible for the diplomacy of duplicity if not the Foreign Ministers, Von Neurath and Ribbentrop, and the diplomatic handy man, Von Papen? Who should be answerable for the oppressive administration of occupied countries if Gauleiters, protectors, governors, and Kommissars such as Frank, Seyss-Inquart, Frick, Von Schirach, Von Neurath, and Rosenberg are not? Where shall we look for those who mobilized the economy for total war if we overlook Schacht and Speer and Funk? Who was the master of the great slaving enterprise if it was not Sauckel? Where shall we find the hand that ran the concentration camps if it was not the hand of Kaltenbrunner? And who whipped up the hates and fears of the public, and manipulated the Party organizations to incite these crimes, if not Hess, Von Schirach, Fritzsche, Bormann, and the unspeakable Julius Streicher? The list of defendants is made up of men who played indispensable and reciprocal parts in this tragedy. The photographs and the films show them again and again together on important occasions. The documents show them agreed on policies and on methods, and all working aggressively for the expansion of Germany by force of arms.

Each of these men made a real contribution to the Nazi plan. Each man had a key part. Deprive the Nazi regime of the functions performed by a Schacht, a Sauckel, a Von Papen, or a Göring, and you have a different regime. Look down the rows of fallen men and picture them as the photographic and documentary evidence shows them to have been in their days of power. Is there one who did not substantially advance the conspiracy along its bloody path toward its bloody goal? Can we assume that the great effort of these men's lives was directed toward ends they never suspected?

To escape the implications of their positions and the inference of guilt from their activities, the defendants are almost unanimous in one defense. The refrain is heard time and again: These men were without authority, without knowledge, without influence, without importance. Funk summed up the general self-abasement of the dock in his plaintive lament that: "I always, so to speak, came up to the door, but I was not permitted to enter."

In the testimony of each defendant, at some point there was reached the familiar blank wall: Nobody knew anything about what was going on. Time after time we have heard the chorus from the dock: "I only heard about these things here for the first time."

These men saw no evil, spoke none, and none was uttered in their presence. This claim might sound very plausible if made by one defendant. But when we put all their stories together, the impression which emerges of the Third Reich, which was to last a thousand years, is ludicrous. If we combine only the stories of the front bench, this is the ridiculous composite picture of Hitler's Government that emerges. It was composed of:

A Number 2 man who knew nothing of the excesses of the Gestapo which he created, and never suspected the Jewish extermination program although he was the signer of over a score of decrees which instituted the persecutions of that race;

A Number 3 man who was merely an innocent middleman transmitting Hitler's orders without even reading them, like a postman or delivery boy;

A foreign minister who knew little of foreign affairs and nothing of foreign policy;

A field marshal who issued orders to the Armed Forces but had no idea of the results they would have in practice;

A security chief who was of the impression that the policing functions of his Gestapo and SD were somewhat on the order of directing traffic;

A Party philosopher who was interested in historical research and had no idea of the violence which his philosophy was inciting in the twentieth century;

A governor general of Poland who reigned but did not rule;

A Gauleiter of Franconia whose occupation was to pour forth filthy writings about the Jews, but who had no idea that anybody would read them;

A minister of interior who knew not even what went on in the interior of his own office, much less the interior of his own department, and nothing at all about the interior of Germany;

A Reichsbank president who was totally ignorant of what went in and out of the vaults of his bank;

And a plenipotentiary for the war economy who secretly marshaled the entire economy for armament, but had no idea it had anything to do with war.

This may seem like a fantastic exaggeration, but this is what you would actually be obliged to conclude if you were to acquit these defendants.

They do protest too much. They deny knowing what was common knowledge. They deny knowing plans and programs that were as public as *Mein Kampf* and the Party program. They deny even knowing the contents of documents they received and acted upon.

Nearly all the defendants take two or more conflicting positions. Let us illustrate the inconsistencies of their positions by the record of one defendant—who, if pressed, would himself concede that he is the most intelligent, honorable, and innocent man in the dock. That is Schacht. And this is the effect of his own testimony—but let us not forget that I recite it not against him alone, but because most of its self-contradictions are found in the testimony of several defendants:

Schacht did not openly join the Nazi movement until it had won, nor openly desert it until it had lost. He admits that he never gave it public opposition, but asserts that he never gave it private loyalty. When we demand of him why he did not stop the criminal course of the regime in which he was a minister, he says he had not a bit of influence. When we ask why he remained a member of the criminal regime, he tells us that by sticking on he expected to moderate its program. Like a Brahmin among untouchables, he could not bear to mingle with the Nazi socially, but never could he afford to separate from them politically. Of all the Nazi aggressions by which he now claims to have been shocked there is not one that he did not support before the world with the weight of his name and prestige. Having armed Hitler to blackmail a continent, his answer now is to blame England and France for yielding.

Schacht always fought for his position in a regime he now affects to despise. He sometimes disagreed with his Nazi confederates about what was expedient in reaching their goal, but he never dissented from the goal itself. When he did break with them in the twilight of the regime, it was over tactics, not principles. From then on he never ceased to urge others to risk their positions and their necks to forward his plots, but never on any occasion did he hazard either of his own. He now boasts that he personally would have shot Hitler if he had had the opportunity, but the German newsreel shows that even after the fall of France, when he faced the living Hitler, he stepped out of line to grasp the hand he now claims to loathe and hung upon the words of the man he now says he thought unworthy of belief. Schacht says he steadily "sabotaged" the Hitler Government. Yet the most relentless secret service in the world never detected him doing the regime any harm until long after he knew the war to be lost and the Nazis doomed. Schacht, who dealt in hedges all his life, always kept himself in a position to claim that he was in either camp. The plea for him is as specious on analysis as it is persuasive on first sight. Schacht represents the most dangerous and reprehensible type of opportunism—that of the man of influential position who is ready to join a movement that he knows to be wrong because he thinks it is winning.

These defendants, unable to deny that they were the men in the very top ranks of power, and unable to deny that the crimes I have

outlined actually happened, know that their own denials are incredible unless they can suggest someone who is guilty.

The defendants have been unanimous, when pressed, in shifting the blame on other men, sometimes on one and sometimes on another. But the names they have repeatedly picked are Hitler, Himmler, Heydrich, Goebbels, and Bormann. All of these are dead or missing. No matter how hard we have pressed the defendants on the stand, they have never pointed the finger at a living man as guilty. It is a temptation to ponder the wondrous workings of a fate which has left only the guilty dead and only the innocent alive. It is almost too remarkable.

The chief villain on whom blame is placed—some of the defendants vie with each other in producing appropriate epithets—is Hitler. He is the man at whom nearly every defendant has pointed an accusing finger.

I shall not dissent from this consensus, nor do I deny that all these dead and missing men shared the guilt. In crimes so reprehensible that degrees of guilt have lost their significance they may have played the most evil parts. But their guilt cannot exculpate the defendants. Hitler did not carry all responsibility to the grave with him. All the guilt is not wrapped in Himmler's shroud. It was these dead men whom these living chose to be their partners in this great conspiratorial brotherhood, and the crimes that they did together they must pay for one by one.

It may well be said that Hitler's final crime was against the land he had ruled. He was a mad messiah who started the war without cause and prolonged it without reason. If he could not rule he cared not what happened to Germany. As Fritzsche has told us from the stand, Hitler tried to use the defeat of Germany for the self-destruction of the German people. He continued to fight when he knew it could not be won, and continuance meant only ruin. Speer, in this courtroom, has described it as follows:

> "... The sacrifices which were made on both sides after January 1945 were without sense. The dead of this period will be the accusers of the man responsible for the continuation of that fight, Adolf Hitler, just as much as the destroyed cities, destroyed in that last phase, who had lost tremendous cultural values and tremendous numbers of dwellings.... The German people"—he said—"remained faithful to Adolf Hitler until the end. He has betrayed them knowingly. He has tried to throw them into the abyss..."

Hitler ordered everyone else to fight to the last and then retreated into death by his own hand. But he left life as he lived it, a deceiver; he left the official report that he had died in battle. This was the man whom these defendants exalted to a Führer. It was they who conspired to get him absolute authority over all of

Germany. And in the end he and the system they created for him brought the ruin of them all. As stated by Speer on cross-examination:

> "... the tremendous danger, however, contained in this totalitarian system only became abundantly clear at the moment when we were approaching the end. It was then that one could see what the meaning of the principle was, namely, that every order should be carried out without any criticism. Everything ... you have seen in the way of orders which were carried out without any consideration, did after all turn out to be mistakes ... This system—let me put it like this—to the end of the system it had become clear what tremendous dangers are contained in any such system, as such, quite apart from Hitler's principle. The combination of Hitler and this system, then, brought about this tremendous catastrophe to this world."

But let me for a moment turn devil's advocate. I admit that Hitler was the chief villain. But for the defendants to put all blame on him is neither manly nor true. We know that even the head of the state has the same limits to his senses and to the hours of his days as do lesser men. He must rely on others to be his eyes and ears as to most that goes on in a great empire. Other legs must run his errands; other hands must execute his plans. On whom did Hitler rely for such things more than upon these men in the dock? Who led him to believe he had an invincible air armada if not Göring? Who kept disagreeable facts from him? Did not Göring forbid Field Marshal Milch to warn Hitler that in his opinion Germany was not equal to the war upon Russia? Did not Göring, according to Speer, relieve General Galland of his air force command for speaking of the weaknesses and bungling of the air forces? Who led Hitler, utterly untraveled himself, to believe in the indecision and timidity of democratic peoples if not Ribbentrop, Von Neurath, and Von Papen? Who fed his illusion of German invincibility if not Keitel, Jodl, Raeder, and Dönitz? Who kept his hatred of the Jews inflamed more than Streicher and Rosenberg? Who would Hitler say deceived him about conditions in concentration camps if not Kaltenbrunner, even as he would deceive us? These men had access to Hitler and often could control the information that reached him and on which he must base his policy and his orders. They were the Praetorian Guard, and while they were under Caesar's orders, Caesar was always in their hands.

If these dead men could take the witness stand and answer what has been said against them, we might have a less distorted picture of the parts played by these defendants. Imagine the stir that would occur in the dock if it should behold Adolf Hitler advancing to the witness box, or Himmler with an armful of

dossiers, or Goebbels, or Bormann with the reports of his Party spies, or the murdered Röhm or Canaris. The ghoulish defense that the world is entitled to retribution only from the cadavers is an argument worthy of the crimes at which it is directed.

We have presented to this Tribunal an affirmative case based on incriminating documents which are sufficient, if unexplained, to require a finding of guilt on Count One against each defendant. In the final analysis, the only question is whether the defendant's own testimony is to be credited as against the documents and other evidence of their guilt. What, then, is their testimony worth?

The fact is that the Nazi habit of economizing in the use of truth pulls the foundations out from under their own defenses. Lying has always been a highly approved Nazi technique. Hitler, in *Mein Kampf,* advocated mendacity as a policy. Von Ribbentrop admits the use of the "diplomatic lie." Keitel advised that the facts of rearmament be kept secret so that they could be denied at Geneva (EC-177). Raeder deceived about rebuilding the German Navy in violation of Versailles. Göring urged Ribbentrop to tell a "legal lie" to the British Foreign Office about the Anschluss, and in so doing only marshaled him the way he was going (2947-PS). Göring gave his word of honor to the Czechs and proceeded to break it (TC-27). Even Speer proposed to deceive the French into revealing the specially trained among their prisoners (R-124).

Nor is the lie direct the only means of falsehood. They all speak with a Nazi double talk with which to deceive the unwary. In the Nazi dictionary of sardonic euphemisms "final solution" of the Jewish problem was a phrase which meant extermination; "special treatment" of prisoners of war meant killing; "protective custody" meant concentration camp; "duty labor" meant slave labor; and an order to "take a firm attitude" or "take positive measures" meant to act with unrestrained savagery. Before we accept their word at what seems to be its face, we must always look for hidden meanings. Göring assured us, on his oath, that the Reich Defense Council never met "as such." When we produced the stenographic minutes of a meeting at which he presided and did most of the talking, he reminded us of the "as such" and explained this was not a meeting of the Council "as such" because other persons were present. Göring denies "threatening" Czechoslovakia; he only told President Hacha that he would "hate to bomb the beautiful city of Prague."

Besides outright false statements and double talk, there are also other circumventions of truth in the nature of fantastic explanations and absurd professions. Streicher has solemnly maintained that his only thought with respect to the Jews was to resettle them on the island of Madagascar. His reason for destroying synagogues, he blandly said, was only because they were architecturally offensive. Rosenberg was stated by his counsel to have always had in

mind a "chivalrous solution" to the Jewish problem. When it was necessary to remove Schuschnigg after the Anschluss, Ribbentrop would have had us believe that the Austrian Chancellor was resting at a "villa." It was left to cross-examination to reveal that the "villa" was Buchenwald Concentration Camp. The record is full of other examples of dissimulations and evasions. Even Schacht showed that he, too, had adopted the Nazi attitude that truth is any story which succeeds. Confronted on cross-examination with a long record of broken vows and false words, he declared in justification—and I quote from the record:

"I think you can score many more successes when you want to lead someone if you don't tell them the truth than if you tell them the truth."

This was the philosophy of the National Socialists. When for years they have deceived the world, and masked falsehood with plausibilities, can anyone be surprised that they continue their habits of a lifetime in this dock? Credibility is one of the main issues of this Trial. Only those who have failed to learn the bitter lessons of the last decade can doubt that men who have always played on the unsuspecting credulity of generous opponents would not hesitate to do the same, now.

It is against such a background that these defendants now ask this Tribunal to say that they are not guilty of planning, executing, or conspiring to commit this long list of crimes and wrongs. They stand before the record of this Trial as bloodstained Gloucester stood by the body of his slain king. He begged of the widow, as they beg of you: "Say I slew them not." And the Queen replied, "Then say they were not slain. But dead they are . . ." If you were to say of these men that they are not guilty, it would be as true to say that there has been no war, there are no slain, there has been no crime.

THE PRESIDENT: I call upon the chief prosecutor for the United Kingdom of Great Britain.

MR. JUSTICE JACKSON: Would it be agreeable, Your Honors, if Sir Hartley Shawcross should start his address after the recess?

THE PRESIDENT: Yes. Then we will sit again at a quarter to 2.

MR. JUSTICE JACKSON: And may I add this for the purpose of the record. I have filed with the Tribunal and furnished to counsel copies of the summation with footnotes to the record. These footnotes are designed, of course, to direct the attention of adversaries and of the Tribunal to the supporting data in the record. I thought they might be helpful in reading it.

THE PRESIDENT: Thank you. The Tribunal will adjourn.

[The Tribunal recessed until 1345 hours.]

Afternoon Session

THE PRESIDENT: I call on the Chief Prosecutor of the United Kingdom of Great Britain and Northern Ireland.

SIR HARTLEY SHAWCROSS (Chief Prosecutor for the United Kingdom): May it please the Tribunal; like my distinguished colleague, whose succinct, able, and eloquent speech I cannot hope to emulate, I desire on behalf of the British prosecutors at this Trial to lay before the Tribunal some comment. I am afraid it is of some length on those salient and outstanding features of the evidence which, in our submission, make clear the guilt of these defendants. Although throughout these proceedings the representatives of the prosecuting powers have worked in the closest cooperation and agreement and although there are certain matters which I shall be laying before the Tribunal on behalf of all of us, we all thought it right at this final stage, even at the cost of some inevitable repetition and overlapping, that we should prepare our final submissions quite independently so that the Tribunal and our own countries might know exactly the grounds on which we seek the condemnation of these men; and if it turns out that several of us point to the same evidence or reach similar conclusions, as no doubt it will, that very coincidence reached independently may perhaps add force to our submissions that each of these defendants is legally guilty.

I say legally guilty. That these defendants participated in and are morally guilty of crimes so frightful that the imagination staggers and reels back at their very contemplation is not in doubt. Let the words of the Defendant Frank, which were repeated to you this morning, be well remembered: "Thousands of years will pass and this guilt of Germany will not be erased." Total and totalitarian war, waged in defiance of solemn undertakings and in breach of treaties; great cities, from Coventry to Stalingrad, reduced to rubble, the countryside laid waste, and now the inevitable aftermath of war so fought—hunger and disease stalking through the world; millions of people homeless, maimed, bereaved. And in their graves, crying out, not for vengeance but that this shall not happen again: 10 million who might be living in peace and happiness at this hour, soldiers, sailors, airmen, and civilians killed in battles that ought never to have been.

Nor was that the only or the greatest crime. In all our countries when perhaps in the heat of passion or for other motives which impair restraint some individual is killed, the murder becomes a sensation, our compassion is aroused, nor do we rest until the criminal is punished and the rule of law is vindicated. Shall we do less when not one but on the lowest computation 12 million

men, women, and children, are done to death? Not in battle, not in passion, but in the cold, calculated, deliberate attempt to destroy nations and races, to disintegrate the traditions, the institutions, and the very existence of free and ancient states. Twelve million murders! Two-thirds of the Jews in Europe exterminated, more than 6 million of them on the killers' own figures. Murder conducted like some mass production industry in the gas chambers and the ovens of Auschwitz, Dachau, Treblinka, Buchenwald, Mauthausen, Maidanek, and Oranienburg.

And is the world to overlook the revival of slavery in Europe, slavery on a scale which involved 7 million men, women, and children taken from their homes, treated as beasts, starved, beaten, and murdered?

It may be that the guilt of Germany will not be erased, for the people of Germany share it in large measure, but it was these men who, with a handful of others, brought that guilt upon Germany and perverted the German people. "It is my guilt"—confessed the Defendant Schirach—"that I educated the German youth for a man who committed murders a millionfold."

For such crimes these men might well have been proceeded against by summary executive action and had the treatment, which they had been parties to meting out against so many millions of innocent people, been meted out to them, they could hardly have complained. But this Tribunal is to adjudge their guilt not on any moral or ethical basis alone, but according to law—that natural justice which demands that these crimes should not go unpunished, at the same time insists that no individual should be punished unless patient and careful examination of the facts shows that he shared the guilt for what has been done. And so, during these many months, this Tribunal has been investigating the facts and has now to apply the law in order both that justice may be done to these individuals as to their countless victims, and also that the world may know that in the end the predominance of power will be driven out and law and justice shall govern the relations between states.

For the effects of this Trial will reach out far beyond the punishment of a score or so of guilty men. Issues are at stake far greater than their fate, although upon their fate those issues, in some measure, depend. In the pages of history it will count for nothing whether this Trial lasted for 2 months or for 10. But it will count for much that by just and patient examination the truth has been established about deeds so terrible that their mark may never be erased, and it will count for much that law and justice have been vindicated in the end.

Within the space of a year evidence far exceeding that previously presented to any tribunal in history has been collected, sifted, and placed before you. Almost all of that evidence consists of the captured records and documents of the government to which these men belonged, and much of it directly implicates each one of them with knowledge of, and participation in one or other aspect of the crimes committed by the Nazi State. This evidence has not been refuted and it will remain forever to confront those who may hereafter seek to excuse or mitigate that which has been done. Yet now that this mass of evidence has been presented to you, I shall invite you for a little to detach your minds from its detail to consider the cumulative effect and to review this overwhelming case as a whole. It is only by chance that their own captured papers have enabled us to establish these crimes out of the very mouths of the criminals. But the case against these men can be established on a broader basis than that, and must be looked at in the light of its historical background.

When one considers the nature and the immensity of the crimes committed, the responsibility of those who held the highest positions of influence and authority in the Nazi State is manifest beyond doubt. For years, in a world where war had itself been declared a crime, the German State was organized for war; in a world where we proclaim the equality of men, for years the Jews were boycotted, deprived of their elementary rights of property, liberty, life itself; for years honest citizens lived in fear of denunciation and arrest by one or other of the organizations, criminal as we allege them to be, through which these men ruled Germany; for years throughout the German Reich millions of foreign slaves worked in farm and factory, were moved like cattle on every road, on every railway line.

These men, with Hitler, Himmler, Goebbels, and a few other confederates, were at once the leaders and the drivers of the German people; it was when they held the highest positions of authority and of influence that these crimes were planned and perpetrated. If these men are not responsible, who are? If minions who did no more than obey their orders, Dostler, Eck, Kramer, and a hundred others, have already paid the supreme penalty, are these men less responsible? How can it be said that they and the offices of state which they directed took no part? Lammers, their own witness, head of the Reich Chancellery, said in 1938 (Document Number 3863-PS):

> "Despite the total concentration of power of authority in the person of the Führer as a matter of principle, no excessively strong and unnecessary centralization of administration in the

hands of the Führer results in the governmental administration....

"The authority of the subordinate leaders"—the Unterführer—"directed downwards, forbids interference with every individual order he may issue. This principle is applied by the Führer in his governmental leadership in such a way that, for example, the position of Reich ministers is actually much more independent today than formerly, even though today the Reich ministers are subordinated to the Führer's unlimited power of command.... Willingness to bear responsibility, ability to make decisions, aggressive energy, and real authority—these are the qualities which the Führer demands primarily of his subordinate leaders. Therefore he allows them the greatest freedom in the direction of their affairs and in the manner in which they fulfill their tasks."

Let them now, accused murderers as they are, attempt to belittle the power and influence they exercised how they will, we have only to recall their ranting as they strutted across the stage of Europe dressed in their brief authority, to see the part they played. They did not then tell the German people or the world that they were merely the ignorant, powerless puppets of their Führer. The Defendant Speer has said (Session of 21 June 1946):

"... even in a totalitarian system there must be total responsibility... it is impossible after the catastrophe to evade this total responsibility. If the war had been won, the leaders would also have assumed total responsibility."

Had the war been won is it to be supposed that these men would have retired to the obscurity and comparative innocence of private citizenship? That opportunity was not denied to them before the war had they wished to disassociate themselves from what was taking place. They chose a different path. From small beginnings, at a time when resistance instead of participation could have destroyed this thing, they fostered the Hitler legend, they helped to build up the Nazi power and ideology and to direct its activities until, like some foul octopus, it spread its slime over Europe and extended its tentacles throughout the world. Were these men ignorant of the ends sought to be achieved during that period of the rise to power? Paul Schmidt, Hitler's interpreter, a witness of great knowledge, has testified (Document Number 3308-PS):

"The general objectives of the Nazi leadership were apparent from the start—namely, the domination of the European continent, to be achieved first by the incorporation of all

German-speaking groups in the Reich, and secondly, by territorial expansion under the slogan of 'Lebensraum.' "

That slogan "Lebensraum"—that entirely false idea that the very existence of the German people depended upon territorial expansion under the Nazi flag—was from the earliest days an openly avowed part of the Nazi doctrine—yet any thinking person must have known that it would lead inevitably to war.

It was the justification Hitler offered to his fellow conspirators at those secret meetings on the 5th of November 1937 (Document Number 386-PS), 23d of May (Document Number L-79), and 23d of November 1939 (Document Number 789-PS), at which the fate of so many countries was sealed.

Although less concrete it was no less false than the demand for a revision of the Treaty of Versailles. The so-called injustice of Versailles, so cunningly exploited to provide a popular rallying point under the Nazi banner, had succeeded in uniting behind the Nazis many Germans who would not otherwise have supported some of the rest of the Nazi program.

And the effect of that propaganda can be judged from the repeated efforts here made by the Defense to develop the alleged injustice of the treaty. Unjust or not, it was a treaty and no government content to live at peace need have complained of its provisions. Even if the complaints were justified, there was comparatively soon no ground left for them. The provisions of the treaty could have been—in some respects they were—revised by peaceful negotiations. By 1935, 4 years before the world was plunged into war, these men had publicly renounced the treaty. What miserable rubbish is the long tirade on behalf of the treaty, when one realizes that by 1939 not only were they free of nearly all the restrictions of which they had complained, but they had seized territory which had never belonged to Germany in the whole of European history. The cry of Versailles was a device for rallying men to wicked and aggressive purposes. But it was a device no less diabolical than the cry of anti-Semitism and racial purity, by which these men sought both to rally and cement the various forms of public opinion in their own country and to sow discord and antagonism amongst the people of foreign lands. Rauschning reports Hitler's statement (Document Number USSR-378):

"Anti-Semitism is a useful revolutionary expedient. Anti-Semitic propaganda in all countries is an almost indispensable medium in the extension of our political campaign. You will see how little time we shall need in order to upset the ideas and criteria of the whole world simply and solely

by attacking Judaism. It is beyond question the most important weapon in our propaganda arsenal."

And as a result of this wicked propaganda, I would remind you of the words of Bach-Zelewski who, when he was asked how Ohlendorf could admit that the men under his command had murdered 90,000 people, replied:

"As to this I am of a different opinion. When, for years, for decades, the doctrine is preached that the Slav race is an inferior race and Jews are not even human beings, then such outburst is inevitable." (Session of 7 January 1946.)

And so, from the earliest day, the aims of the Nazi movement were clear and beyond doubt: Expansion, European domination, elimination of the Jews, ultimate aggression, ruthless disregard of the rights of any people but themselves.

Such were the beginnings. I shall not pause to trace the Nazi Party's growth to power; how, as the writer of the history of the SA has said, they found that (Document Number 2168-PS) "... possession of the streets is the key to power in the state," or how, by the organized terror which the witness Severing has described the storm troops of Brown Shirts terrified the people whilst the Nazi propaganda, headed by *Der Stürmer,* vilified all opponents and incited people against the Jews.

I shall not examine that period, grave as are the lessons which democratic peoples ought to learn from it, for it may not be easy to say exactly at what date each of these defendants must have realized, if, indeed, he had not known and gloried in it all from the beginning, that Hitler's apparently hysterical outpourings in *Mein Kampf* were intended in all seriousness and that they formed the very basis of the German plan. Some, no doubt, such as Göring, Hess, Ribbentrop, Rosenberg, Streicher, Frick, Frank, Schacht, Schirach, and Fritzsche, realized it, very early. In the case of one or two, such as Dönitz and Speer, it may have been comparatively late. Few can have been ignorant after 1933; all must have been active participants by 1937. When one remembers the apprehension caused abroad during that period there can be no doubt, in our submission, that these men, almost all of whom were the rulers of Germany from 1933 onward, Hitler's intimate associates, admitted to his secret meetings, with full knowledge of plans and events, not only acquiesced in what was taking place, but were active and willing participants.

May I then examine in a little more detail the period of the "build-up"—the position of domestic government in Germany between 1933 and 1939, because what happened then makes clear the criminal involvement of these men in what was done later. What I say now has some special reference to the first Count in

the Indictment, for it is against this general background that we must consider the allegation that these men were common conspirators to commit the crimes (such as Crimes Against Peace, and the Crime Against Humanity), which are more specifically charged in the later Counts.

Totalitarian government brooks no opposition. Any means justifies the end and the immediate end was ruthlessly to gain complete control of the German State and to brutalize and train its people for war. What stood in the way in January 1933? First, the members of the other political parties; secondly, the democratic system of election and of public assembly, the organization of trade unions; thirdly, the moral standards of the German people, and the churches which fostered them.

Accordingly the Nazis set out, quite deliberately, to eliminate this opposition: first, by imprisoning or terrorizing their opponents; second, by declaring illegal all elements of tolerance and liberalism, outlawing trade unions and opposition parties, reducing the democratic assembly to a farce and controlling elections; third, by systematic discouragement and persecution of religion, by replacing the ethics of Christianity with the idolatry of the Führer and the cult of the blood and by rigidly controlling education and youth. Youth was systematically prepared for war and taught to hate and persecute the Jews; the plans for aggression required a nation trained in brutality and taught that it was both necessary and heroic to invade the peoples of other countries.

It is a measure of the wickedness and effectiveness of this domestic policy that, after 6 years of rule, the Nazis found little difficulty in leading a perverted nation into the greatest criminal enterprise in history. It is perhaps worth considering from the evidence a few examples of how this policy developed during these 6 years. They are examples of what was happening in every German town and village. It must be remembered here that in the need to avoid cumulative evidence you have, in the result, been deprived of its cumulative effect (Document Number D-911).

First then, the elimination of political opponents. Within 6 weeks of the Nazis coming to power in January 1933, the German newspapers were quoting official sources for the statement that 18,000 Communists had been imprisoned whilst the 10,000 prisoners in the jails of Prussia included many Socialists and intellectuals. The fate of many of these men was described by Severing, who estimated that at least 1,500 Social Democrats and a similar number of Communists were murdered in concentration camps recently established by Göring as Chief of the Gestapo.

These camps, controlled by the Party organizations, were deliberately so run as to strike terror throughout the country. In

the words of the witness Severing, the concentration camps represented for the people "the incarnation of all that was terrible."

Göring has said: "We found it necessary that we should permit no opposition," and he admitted that there were arrested and taken into protective custody people who had committed no crime.

It might have been well if at that time they had read the maxim of which they spoke yesterday, *nulla poena sine lege.*

Göring added: "... if everyone knows that if he acts against the State he will end up in a concentration camp that is our advantage."

The camps were at first run indiscriminately by the SA and the SS, and according to Göring were created "... as an instrument which at all times was the instrument of power for home politics."

Gisevius, who at that time had recently joined the Gestapo, you remember, gave the following description:

> "I was hardly more than 2 days in that new police office when I had discovered already that incredible conditions existed there. There was no police which interfered against crimes, against murder, against arrests, against burglary. There was a police organization which protected just those who committed such crimes. Those arrested were not those who were guilty of such crimes; they arrested those who sent their cries for help to the police. It was not a police which interfered for protection, but a police whose task, it seemed, was in fact to hide, to cover up, and to sponsor crimes; those commandos of the SA and SS who played police were encouraged by that so-called Secret State Police and all possible aid was given to them....
>
> "Special concentration camps for the Gestapo were installed, and their names will remain as a terrible shame in history. They were Oranienburg and the private prison of the Gestapo, in the Papestrasse, the Columbia House, or, as it was called cynically, the 'Columbia Diele'.... I asked one of my colleagues, who was also a professional civil servant.... 'Tell me, please, am I here in a police office or in a robber's cave?' The answer that I received was: 'You are in a robber's cave and you can expect that you will see much more yet.' "

Gisevius went on to describe Göring's order to murder the National Socialist Strasser and how he gave "blank authority" for murder to the political police by signing a form granting amnesty to the policeman, leaving a blank space for the name of the murdered person in respect of whom the amnesty had been granted.

If confirmation of the evidence of these defense witnesses were required, it is to be found in the series of reports dated in May and June 1933, from the Munich Public Prosecutor to the Minister of Justice, which are in evidence recording a succession of murders by SS officials in the concentration camp at Dachau (Documents 641, 642, 644, 645-PS).

In 1935 the Reich Minister of Justice is writing to Frick (Document Number 3751-PS). He is protesting against numerous instances of ill-treatment in concentration camps, including:

"Beating as a disciplinary punishment . . .

"Ill-treatment—mostly of political internees—in order to make them talk."—and—"Ill-treatment of internees arising out of wantonness or sadistic motives."

He went on to complain that:

"The beating of the Communists held in custody is regarded as an indispensable police measure for a more effective suppression of Communist activities."

And after citing instances of torture, he concludes: "These few examples show a degree of cruelty which is an insult to German sensibility. . . ."

Frick's sensibility was apparently not so tender. The very next year he received a similar protest from one of his own subordinates and shortly afterward he issued a decree making all police forces subordinate to Himmler, the very man whom he knew to be responsible for these atrocities (Document Number 775-PS).

These brutalities, well known to ministers, as we suggest they were, were not confined to the privacy of concentration camps. It is perhaps worth quoting one instance from the thousands who suffered from the policy which was being pursued.

The Tribunal will remember the account by Sollman, a Social Democrat, and member of the Reichstag from 1919 to 1933. He spoke of the incident on 9 March 1933 when, to quote his own words (Document Number 3231-PS):

". . . members of the SS and SA came to my home in Cologne and destroyed the furniture and my personal records. At that time I was taken to the Brown House in Cologne, where I was tortured, being beaten and kicked for several hours. I was then taken to the regular Government prison in Cologne where I was treated by two medical doctors and released the next day. On 11 March 1933 I left Germany. . . ."

The second object, the suppression of all democratic institutions, was comparatively simple. The necessary laws were passed to outlaw trade unions. The Reichstag became a farce directly the opposition parties had been dissolved and their members had been put in concentration camps. The witness Severing has spoken

of the treatment of the Reichstag members. In 1932, on Von Papen's order he, who was chief of the Prussian Ministry of the Interior, was forcibly removed from his office. It was not long after the 30th of January 1933 that the Communist and Social Democratic parties were decreed illegal and all form of public expression, other than by the Nazis, was prevented. This action resulted from deliberate planning. Frick has said as far back as 1927 (Document Number 2513-PS):

"The National Socialists longed for the day when . . ."—they—"... could put an inglorious but well-deserved end to this infernal sham (the Reichstag) and open the way for a national dictatorship."

At this time when democratic government is seeking to re-establish itself throughout the world, the Nazi attitude to elections is not to be forgotten. Free elections could not, of course, be permitted. Göring had told Schacht in February 1933 when seeking money for the Party from industry, and I quote (Document Number D-203):

"The sacrifice asked for will surely be so much easier for industry to bear if it is realized that the election of 5 March will be the last one for the next 10 years, probably for the next 100 years."

In these circumstances it is not surprising to find that thereafter, as the evidence such as the SD report on the conduct of the plebiscite at Kappel makes clear, the occasional votes of the people, always announced as triumphs for the Nazis, were conducted dishonestly (Document Number R-142).

I turn to the third class of opposition, the churches—Bormann's memorandum sent in December 1941 to all Gauleiter and distributed to the SS sums up the Nazi attitude to Christianity (Document Number D-75):

"National Socialist and Christian concepts are irreconcilable.... If therefore in the future our youth knows nothing more of this Christianity whose doctrines are far below ours, Christianity will disappear by itself.... All influences which might impair or damage the leadership of the people exercised by the Führer with the aid of NSDAP must be eliminated. More and more the people must be separated from the churches and their organs, the pastors...."

The persecution of the churches makes a melancholy story. From the abundance of evidence which has been submitted to the Tribunal it is perhaps permissible to quote from a complaint to Frick made early in 1936 (Document Number 775-PS):

"... lately half the political police reports concern clerical matters. We have untold petitions from all kinds of cardinals,

bishops, and dignitaries of the Church. Most of these complaints concern matters under the jurisdiction of the Reich Ministry of the Interior, although the respective rules were not decreed by it. . . ."

And then after referring to the chaos resulting from the division of authority between the various police forces, the report goes on to refer to the results of the religious struggle:

"Instances of disturbances of congregations are mounting terribly fast lately, often necessitating the intervention of the emergency squad. . . . After discarding the rubber truncheon, the idea of exposing executive officials to situations in which, during interruptions of meetings, they may be forced to use cold steel, is unbearable."

The diary of the Minister of Justice for 1935 provides ample instances of the sort of behavior which was being encouraged by the Hitler Youth under the Defendant Schirach and the Defendant Rosenberg. The Hitler Jugend, whose membership increased from just under 108,000 in 1932 to nearly 8 million in 1939, was organized on a military basis (Document Number 2435-PS). The close collaboration between Keitel and Schirach in their military education has been described; the special arrangement between Schirach and Himmler by which the Hitler Jugend became the recruiting organization for the SS is in evidence (Document Number 2396-PS). You will not have forgotten the words of Schirach's deputy (Document Number 1992-PS): "In the course of years we want to insure that a gun feels just as natural in the hands of a German boy as a pen."

What a horrible doctrine!

The terrorization, murder, and persecution of political opponents, the dissolution of all organizations affording opportunity for opposition, criticism, or even free speech, the systematic perversion of youth and training for war would not, however, have sufficed without persecution of the Jews.

Let no one be misled by the metaphysical explanations which are put forward for this most frightful crime. What Hitler himself in this very town described as the fanatical combat against the Jews was part and parcel of the policy of establishing "ein Volk"—"ein Herrenvolk," which would dominate Europe and the world. And so the persecution of the Jews was popularized throughout the country. It provided the cement which bound the people to the regime. It gave the youths a butt to bully and so to acquire practical schooling in brutality.

With the accession to power the persecution of the Jews increased in violence. The final solution of mass murder had then been conceived. In *Mein Kampf* of Hitler, the bible of the Nazis,

Hitler had regretted that poison gas had not been employed to exterminate the German Jews during the last war, and as early as 1925 Streicher said (Document Number M-13): "Let us make a new beginning today, so that we can annihilate the Jew." It may be that he, even before Hitler, Himmler, or the others, had visualized the annihilation of the Jews, but the Nazis were not at first ready completely to defy world opinion and they confined themselves to persecution and to making life in Germany unbearable for Jews. To the never-ceasing accompaniment of the *Stürmer* and the official Nazi press the campaign of Jew-baiting was fostered and encouraged. Rosenberg, Von Schirach, Göring, Hess, Funk, Bormann, Frick joined hands with Streicher and Goebbels. The boycott in April 1933 celebrated the Nazi accession to power and provided only a taste of what was to follow. It was accompanied by demonstrations and window-smashing—"Action Mirror" as it has been referred to in this Court. Accounts of typical incidents are given in the affidavit of the witness Geist who describes the events in Berlin on 6 March 1933 (Document Number 1759-PS):

> "Wholesale attacks on the Communists, Jews, and those who were suspected of being either; mobs of SA men roamed the streets, beating up, looting, and even killing persons."

In 1935 followed the infamous Nuremberg Decrees. In 1938 the so-called spontaneous demonstrations ordered throughout Germany resulted in the burning of the synagogues, the throwing of 20,000 Jews into concentration camps with the accompaniment of penalties, of Aryanization of property, and the wearing of a yellow star.

The cynicism of these men and the merciless character of their policy towards the Jews appeared at Göring's meeting of 12 November 1938, when they vied with each other in suggesting methods of degrading and persecuting their helpless victims. Neither Hitler nor Himmler, whom today they seek to blame, was present, but who, reading the record of that meeting, can doubt the end in store for the Jews of Europe? At that meeting Heydrich reported on the events which occurred on the night of 9 November: 101 synagogues destroyed by fire, 76 demolished and 7,500 stores ruined throughout the Reich. The Reichsmark approximate cost of replacing broken glass alone was estimated at 6 million and the damage to one store alone in Berlin at 1.7 million Reichsmark. Heydrich also reported 800 cases of looting, the killing of 35 Jews, and estimated the total damage of property, furniture, and goods at several hundred million Reichsmark.

You will recall Heydrich's order for the riot, including the arrests of the Jews and their removal to concentration camps. After referring to the fact that demonstrations were to be expected

in view of the killing of a German legation official in Paris that night, he instructs the Police on the prospective burning of synagogues, destruction of business, and private apartments of Jews, and in their duty to refrain from hindering the demonstrators: "... the Police has only to supervise compliance with the instructions." And finally (Document Number 3051-PS):

> "In all districts as many Jews—especially rich ones—are to be arrested as can be accommodated in the existing prisons. For the time being only healthy men, not too old, are to be arrested. Upon their arrest, the appropriate concentration camps should be contacted immediately in order to confine them in these camps as fast as possible."

We now know from the evidence with regard to the seizure of the houses of Jews by Neurath and Rosenberg why the orders were to concentrate upon the richest (Document Number 1759-PS).

These events are neither secret nor hidden. Ministers were writing to each other and discussing them. Long before 1939 they were common knowledge not only to Germany but to the whole world. Every one of these defendants must have heard again and again stories similar to that of Sollman. Almost all of them have sought to gain credit from helping one or two Jews; and you will remember the evidence of a special office in Göring's Ministry to deal with protests, and his witness Körner who stated with pride that Göring had always intervened on behalf of individuals (Session of 12 March 1946 a. m.). Perhaps it afforded them some gratification or eased their conscience in some way occasionally to demonstrate their influence by exempting some unhappy individual who sought their favor from the general horror of the regime which they continued to uphold. But these men participated in a Government which was conducted without any regard for human decency or established law. There is not one of them who, being a member of the Government during that period, has not got the blood of hundreds of his own countrymen on his hands.

Göring and Frick established the concentration camps; the witness Severing and the documents quoted testify to the murders which took place in them at a time when these two were directly responsible. Even Göring could not defend all the murders of 30 June 1934. He shares with Hess and Frick the responsibility for the Nuremberg Laws. The record of the meeting of 12 November 1938 (Document Number 1816-PS) and Göring's initials on Heydrich's order of the 9 November (Document Number 3051-PS) require no comment.

As Ambassador in England, Ribbentrop must have been well aware of the facts, if only from the English papers, whilst his

delegate Woermann assented to the atrocities reported to the meeting of 12 November 1938. The previous owner of his country house, Herr Von Remitz, was placed in a concentration camp, and he expressed his sentiments toward the Jews to M. Bonnet, on 8 December 1938 in the following terms (Document Number L-205):

> "The German Government had therefore decided to assimilate them"—the Jews—"with the criminal elements of the population. The property which they acquired illegally would be taken from them. They would be forced to live in districts inhabited by the criminal classes."

Hess, who set up an office for racial policy in 1933, shares responsibility for the Nuremberg Decrees (Document Number 1814-PS).

At the meeting of 12 November 1938 a full report was given of similar measures against the Jews in Austria (Document Number 1816-PS) and it seems certain that the Defendant Kaltenbrunner as a faithful member of the Party was giving full support to the necessary measures. The evidence that Seyss-Inquart was playing his part is before the Tribunal. Rosenberg was writing *The Myth of the 20th Century* and taking his full share in the struggle against the Church and in the anti-Semitic policy of the Government; whilst even Raeder on Heroes' Day 1939 was speaking of "the clear and inspiring summons to fight Bolshevism and international Jewry whose race-destroying activities we have sufficiently experienced on our own people."

Frick, as Minister of the Interior, bears a responsibility second to none for the horrors of the concentration camps and for the Gestapo, whilst Frank, as Minister of Justice for Bavaria, was presumably receiving the reports on the murders in Dachau. He was the leading jurist of the Party, a member of the Central Committee which carried out the boycott of the Jews in March 1933 and he spoke on the wireless in March 1934 justifying racial legislation and the elimination of hostile political organizations. He also was present at Göring's meeting.

The Tribunal will not require to be reminded of the part played by Streicher. It was in March 1938 that the *Stürmer* began consistently to advocate extermination, the first article of a series which was to continue throughout the next 7 years, beginning with an article signed by Streicher ending with the words: "We are approaching wonderful times—a Greater Germany without Jews."

Funk, as Vice President of the Reich Chamber for Culture from 1933, had participated in the policy for the elimination of the Jews (Document 3505-PS); he was present and assented to the recommendations at Göring's November meeting in 1938 at which it will

be remembered Göring suggested that it would have been better to kill 200 Jews, whereupon Heydrich mentioned that in fact the number was a mere 35 (Document 1816-PS).

Schacht himself admitted that as early as the second half of 1934 and the first half of 1935 he found that he was wrong in thinking that Hitler would bring the "revolutionary" force of the Nazis into a regulated atmosphere, and that he discovered that Hitler, having done nothing to stop the excesses of individual Party members or Party groups, was in fact pursuing a "policy of terror." Nevertheless he remained in office and Schacht accepted the Golden Party Badge in January 1937 when Von Eltz refused it.

Schirach has confirmed his part in insuring that the younger generation of Germany grew up rabid anti-Semites under his teaching. He cannot escape responsibility for training the youth to bully Jews, to persecute the Church, to prepare for war. This perversion of children is perhaps the basest crime of all.

Sauckel, who had joined the Party in 1921, filled the post of Gauleiter of Thuringia (Document Number 2974-PS). He cannot have been ignorant of the persecution of the churches, of the trade unions, of other political parties and of the Jews, taking place throughout this important Gau, and there is every reason to suppose that he gave the fullest support to these policies and thus enhanced his reputation with the Nazis. Papen and Neurath were in a better position to judge these matters than any of the other defendants, since it was their political associates who were being persecuted; whilst, in the case of Papen, some of his own staff were killed and he himself arrested and was lucky to escape with his life.

Neurath's attitude to the Jews is shown by his speech in September 1933:

> "The stupid talk about purely internal affairs, as for example the Jewish question, will quickly be silenced if one realizes that the necessary cleaning up of public life must temporarily entail individual cases of personal hardship but that nevertheless it only serves to establish all the more firmly the authority of justice and law in Germany."
>
> What prostitution of these great words!

Of the remainder, all were men of intelligence and already held positions of considerable authority. None of them can have been ignorant of what the whole world knew, yet not one of them has suggested that he made any effective protest against this regime of brutality and terror. All of these men continued in their spheres of government and in the highest positions of responsibility. Each in his part—and such a vital part—these men built up the evil

thing, the ultimate purpose of which was so well known to them, and instilled the evil doctrines which were essential to the achievement of that purpose. It was Lord Acton—that great European—who, 80 years ago, in expressing his conviction of the sanctity of human life, said: "The greatest crime is homicide. The accomplice is no better than the assassin; the theorist is the worst."

I shall return if I may, later, to the question of conspiracy and to the part these men played in it, but no conclusion upon the conspiracy charge in the first Count of the Indictment is really possible until the specific crimes set out in the subsequent counts have been considered. And first of these is the Crime against Peace, set out in Count Two. I say first, first in its place in the Indictment. Moralists may argue which is greatest in moral guilt. But this perhaps should be said at the very outset. It is said that there is no such crime as a crime against peace, and those superficial thinkers who, whether in this Court or in armchairs elsewhere, have questioned the validity of these proceedings, have made much of this argument. Of its merits I shall have something to say presently. But let it be said plainly now that these defendants are charged also as common murderers. That charge alone merits the imposition of the supreme penalty and the joinder in the Indictment of this Crime against Peace can add nothing to the penalty which may be imposed on these individuals. Is it, then, a mere work of supererogation to have included this matter in the Indictment at all? We think not, for the very reason that more is at stake here than the fate of these individuals. It is the crime of war which is at once the object and the parent of the other crimes; the Crimes against Humanity, the War Crimes, the common murders. These things occur when men embark on total war as an instrument of policy for aggressive ends.

Moreover, taking this crime, the Crime against Peace, in isolation, it was responsible for the deaths in battle of 10 million men, and for bringing to the very edge of ruin the whole moral and material structure of our civilization. Although it may be that it may add nothing to the penalty which may be imposed upon these men, it is a fundamental part of these proceedings to establish for all time that international law has the power, inherent in its very nature, both to declare that a war is criminal and to deal with those who aid and abet their states in its commission. I shall come back to the law. Let me first refer to the facts.

You have had from Defense Counsel an elaborate, but a partial and a highly controversial account of foreign relations leading up to 1939. I do not propose to follow them in that examination, nor am I concerned to say that as events have turned out, the policies pursued by the democratic powers may not sometimes have been

weak, vacillating, and open to criticism. Defense Counsel have sought to base some argument on the protocol attached to the German-Soviet Pact. They argue that it was wrong. I am not concerned with that, and, of course, I do not concede it. But let them argue that it was wrong. Do two wrongs make a right? Not in that international law which this Tribunal will administer.

The review which Defense Counsel have made entirely overlooks the two basic facts in this case, that from the time of *Mein Kampf* on, the whole aim of Nazi policy was expansion, aggression, domination, and that the democratic powers had to deal with a Germany of which that was, in spite of occasional lip service to peace, the fundamental aim. If peace was contemplated at all, it was peace only at Germany's price. And knowing that that price would not be and could not be paid voluntarily, the Germans were determined to secure it by force.

Whilst the German people were being psychologically prepared for war, the necessary measures of rearmament were taken simultaneously. At his conference on the 23d of November 1939, Hitler summed up this period of preparation in these words (Document Number 789-PS):

> "I had to reorganize everything beginning with the mass of the people extending it to the Armed Forces. First internal reorganization, eradication of appearances of decay and of defeatist ideas, education for heroism. While reorganizing internally, I undertook the second task to release Germany from its international ties . . . secession from the League of Nations and denunciation of the Disarmament Conference . . . After that the order for rearmament . . . In 1935 the introduction of compulsory armed service. After that militarization of the Rhineland . . ."

The conspirators set out first to get rid of the political restraints which prevented rearmament. In October 1933 Germany left the League of Nations and in March 1935 renounced the armament clauses of Versailles and informed the world of the establishment of an air force, of a large standing army, and of conscription. Already the Reich Defense Council had been set up and its Working Committee had had its second meeting as early as 26 April 1933 with representatives from every department. It is difficult, is it not, to believe that reading the minutes of these meetings, as they must have done, Neurath, Frick, Schacht, Göring, Raeder, Keitel, and Jodl, the last two being generally present, can have supposed that the regime did not intend war.

On the economic side Schacht, already President of the Reichsbank and Minister of Economics, was made General Plenipotentiary

for War Economy in May 1935. The appointment was to be a complete secret (Document Number 2261-PS). His contribution is best expressed in his own words (Document Number EC-611):

> "It is possible that no bank of issue in peacetime carried on such a daring credit policy as the Reichsbank since the seizure of power by National Socialism. With the aid of this credit policy, however, Germany created an armament second to none and this armament in turn made possible the results of our policy."

Schacht's speech on 29 November 1938 is seen to be no boast when the report of his deputy, which has been put in evidence, is considered. That report shows that under Schacht's guidance, 180,000 industrial plants had been surveyed as to usefulness for war purposes (Document Number EC-258). Economic plans for the production of 200 basic materials had been worked out. A system for the letting of war contracts had been revised, allocations of coal, motor fuel and power had been determined, 248 million Reichsmark had been spent on storage facilities alone, evacuation plans for skilled workers and war materials and military zones had been worked out; 80 million wartime ration cards had already been printed and distributed to local areas and a card index on the skill of some 20 million workers had been prepared.

The most detailed and thorough preparations which that report sets out were not made without the knowledge of every member of the Government and no more graphic illustration of the common purpose and awareness of the aim which permeated all departments of the State is to be found than the second meeting of the Reich Defense Council itself held on 25 June 1939, under the presidency of the Defendant Göring, the head of the Four Year Plan. The Defendants Frick, Funk, Keitel, and Raeder were present and Hess and Ribbentrop were represented. The methodical detail in the plans which were being worked out—the preparation in respect of manpower involving the use of concentration camp workers and the unfortunate slaves of the protectorate are eloquent testimonies to the size of the struggle upon which these men knew that Germany was about to embark.

The major share in rearmament must be attributed to the Defendants Göring, Schacht, Raeder, Keitel, and Jodl, but the others, too, each in his sphere, played their parts: Rosenberg, Schirach, and Streicher in education, Dönitz in the preparation of the U-boat fleet, Neurath and Ribbentrop in the field of foreign affairs.

Funk and Fritzsche were reorganizing propaganda and news systems until the former succeeded Schacht and became Minister of

Economics and in September 1938 General Plenipotentiary for Economics. As Plenipotentiary Funk was charged with insuring the economic conditions for the production of the armament industry, according to the requirements of the High Command. Frick as Plenipotentiary for the Reich Administration (Document Number 2978-PS), with Funk and Keitel, formed the Three Man College planning the necessary steps and decrees in case of war.

It is unnecessary in assessing this work of rearmament to do more by way of summary than to quote the words of Hitler himself in the memorandum which Jodl described as written during two nights of work by the Führer personally and which he sent to the Defendants Raeder, Göring, and Keitel. In that memorandum of 9 October 1939, Hitler finally disposes of the evidence of these defendants that Germany was never adequately prepared for war (Document Number L-52):

> "The military application of our people's strength has been carried through to such an extent that within a short time at any rate it cannot be markedly improved upon by any manner of effort."

And again:

> "The warlike equipment of the German people is at present larger in quantity and better in quality for a great number of German divisions, than in the year 1914. The weapons themselves, taking a substantial cross section, are more modern than is the case with any other country in the world at this time. They have just proved their supreme warworthiness in a victorious campaign. In the case of the armaments of other countries this has yet to be demonstrated. In some arms Germany today possesses clear indisputable superiority of weapons."

And then, speaking of the ammunition available after the conclusion of the Polish campaign:

> "There is no evidence available to show that any country in the world disposes of a better total ammunition stock than the German Reich. . . . The Air Force at present is numerically the strongest in the world. . . . The anti-aircraft artillery is not equalled by any country in the world."

That, then, was the practical result of 6 years of intensive rearmament carried out at the expense and with the knowledge of the whole of the German people.

Meanwhile the youth of Germany was educated and drilled in semimilitary formations for war and then, on reaching the age for conscription, was called up for more intensive training. This was going on throughout the Reich, together with the enormous work

of economic preparation. Is it to be believed that any one of these men did not guess—did not, indeed, know—the purpose of this terrific effort?

If, indeed, any of them was in doubt, the successful actions in which—to use the words of one of Neurath's witnesses—"the Nazis were able to reap cheap laurels without war through the successfully practiced tactics of bluff and sudden surprise,"—must have opened their eyes.

The first step was the Rhineland and the technique became the model for each subsequent move. On 21 May 1935, Hitler gave a solemn assurance that the stipulations of Versailles and Locarno were being observed. Yet 3 weeks earlier on the very day of the conclusion of the Franco-Soviet Pact, later to become the official excuse for the reoccupation of the Rhineland, and the defense for it, before this Tribunal, the first directive for reoccupation had been issued to the service chiefs. The Defendant Jodl, having perhaps noted the significance of the date, has sought to persuade the Tribunal that his first admission, that "Operation Schulung" referred to the reoccupation of the Rhineland, was wrong, and that it applied to some military excursion in the Tyrol. Yet on the 26th of June he himself was addressing the Working Committee of the Reich Defense Council on the plans for reoccupation and revealing that weapons, equipment, insignia, and field grey uniforms were being stored in the zone under conditions of the greatest secrecy (Document Number EC-405). Can anyone who reads his words doubt that this process had been going on at least for 7 weeks?

Any representative of the innumerable departments who attended that meeting and heard Jodl's remarks on the 26th of June 1935 or who subsequently read the minutes knew what to expect. On the 2d of March 1936 the final orders were given and passed to the Navy 4 days later (Document Number C-194). The Defendants Keitel, Jodl, Raeder, Frick, Schacht, and Göring were all involved in the necessary executive action and, if his U-boats complied with the instruction of the 6th of March, the Defendant Dönitz, as well.

From the beginning, at every stage you see the common plan worked out—and worked out as it could only be if each of those men played his allotted part. First the period of apparent quiet, during which treaties are concluded, assurances given, and protestations of friendship made while beneath the surface the Auslands-Organisation under Hess and Rosenberg begins to undermine and disrupt. The victim is deceived by open promises and weakened by underhand methods. Next, the decision to attack is taken and military preparations are hastened. If the victim shows signs of suspicion, the assurances of friendship are redoubled.

Meanwhile, the finishing touches are put to the work accomplished by the fifth column. Then when all is prepared, what Hitler called "the propagandist cause for starting the war" is chosen, frontier incidents are faked, abuse and threats take place of fair words and everything is done to terrify the victim into submission. Finally, the blow is struck without warning. The plan varies in detail from case to case, but essentially, it is the same, the perfect example repeated again and again, of treachery, intimidation, and murder.

The next step was Austria. First, the Nazis arranged the murder of Dollfuss in 1934. After the evidence in the case of the Defendant Neurath, there can be little doubt as to his assassination being plotted in Berlin and arranged by Habicht and Hitler some six weeks before. The failure of that Putsch made it necessary to temporize, and accordingly in May 1935 Hitler gave a complete assurance to Austria (Document Number TC-26). At the same time the Defendant Papen was sent to undermine the Austrian Government. With the occupation of the Rhineland, Austria was next on the program but Hitler was still not yet ready, hence the solemn agreement of July 1936 (Document Number T-22). By the autumn of 1937 Papen's reports showed progress and accordingly the plot was divulged at the Hossbach meeting (Document Number 386-PS). A slight delay was necessary for the removal of the refractory Army leaders, but in February 1938, Papen having completed his plotting with Seyss-Inquart, Schuschnigg was lured to Berchtesgaden and bullied by Hitler, Ribbentrop, and Keitel. Shortly afterward, the final scene took place; Göring played his part in Berlin. The defendants, Göring, Hess, Keitel, Jodl, Raeder, Frick, Schacht, Papen, and Neurath, were all aware of this Austrian plot, Neurath and Papen from the very beginning of it.

With the exception of Göring, each one of them has attempted to put forward a defense of ignorance which cannot be regarded as other than ludicrous in the light of the documents. Not one of them has suggested that he protested, each one of them remained in office thereafter.

Already the plan for Czechoslovakia was ready; it had been discussed at the Hossbach meeting in November 1937, within 3 weeks of the Munich Agreement the directive to prepare to march in had been given and on the 15th of March 1939, President Hacha having been duly bullied by Hitler, Ribbentrop, Göring, and Keitel, Prague was occupied and the Protectorate established by Frick and Neurath. You will remember the astonishing admission of Göring that although he certainly threatened to bomb Prague he never really intended to do it. Ribbentrop also seems to have considered that in diplomacy any lie is permissible.

The stage was now set for Poland.

As Jodl explained (Document Number L-172):

"The peaceful solution of the Czech conflict in the autumn of 1938 and the annexation of Czechoslovakia rounded off the territory of greater Germany so that it was possible to consider the Polish problem on a basis of more or less favorable strategic premises."

And now the time has come when, to use Hitler's words (Document Number 386-PS): "German policy must reckon with its two hateful enemies, England and France." And accordingly followed the policy laid down by Ribbentrop in January 1938 (Document Number TC-75): "The formation in great secrecy but with wholehearted tenacity of a coalition against England."

In the case of Poland, however, the German Foreign Office had already advised Ribbentrop as long ago as a month before Munich in the following terms (Document Number TC-76):

"It is unavoidable that the German departure from the border problems in the southeast and their direction to the east and northeast must make the Poles sit up. The fact is that after the solution of the Czech problem it will be generally assumed that Poland will be the next in turn. But the later this assumption sinks in in international politics as a firm factor the better. In this sense, however, it is important for the time being to carry on German policy under the well-known and proved slogans of the right to autonomy and racial unity. Anything else might be interpreted as pure imperialism on our part and create resistance to our plan by the Entente at an earlier date and more energetically than our forces could stand up to."

In this case, therefore, the usual assurances were reiterated and again and again Hitler and Ribbentrop made the most explicit statements. Meanwhile the usual steps were taken, and following the meeting of the 23d of May 1939 (Document L-79), which Raeder described as an academic lecture on war, the final military economic and political preparations for war against Poland were taken and in due time war was commenced; and you get that quotation that you have heard so often, and it ought to be remembered for all times (Document Number 1014-PS):

"The victor shall not be asked later on whether we were telling the truth or not. In starting and making a war, not the right is what matters, but victory."

These were Hitler's words, but those men echoed and implemented them at every stage. That was the doctrine underlying Nazi policy. Step by step the conspirators had reached the crucial

stage and had launched Germany upon an attempt to dominate Europe and involve the world in untold horror. Not one of these men had turned against the regime. Not one of them except Schacht—to whose vital contribution to the creation of the Nazi monster I shall return later—had resigned and even he continued to lend his name to the Nazi Government.

Would that be a convenient place to adjourn?

THE PRESIDENT: Yes, we will adjourn now.

[A recess was taken.]

SIR HARTLEY SHAWCROSS: If it please the Tribunal: Holland having been overrun, the course of the war soon showed that Germany's military aims and the interests of her strategy would be improved by further aggression. I do not propose to take time now by tracing again the various steps. As Hitler said at the meeting in November 1939 (Document 739-PS):

> "Breach of the neutrality of Belgium and Holland is meaningless. No one will question that when we have won. We shall not bring forth as silly a reason for the breach of neutrality as in 1914."

Norway and Denmark were invaded. No kind of excuse, then or now, has been put forward for the occupation of Denmark, but a strenuous attempt has been made in the course of this Trial to suggest that Norway was invaded only because the Germans believed that the Allies were about to take a similar step. Even if it were true, it would be no answer, but the German documents completely dispose of the suggestion that it was for such a reason that the Germans violated Norwegian neutrality.

Hitler, Göring, and Raeder had agreed as early as November 1934, and I quote (Document Number C-190): "... no war could be carried on if the Navy was not able to safeguard the ore imports from Scandinavia."

Accordingly, as the European struggle drew near, a nonaggression pact was made with Denmark on 31 May 1939 (Document Number TC-24) following the mutual assurance to both Norway and Denmark which had already been given a month earlier (Document Number TC-30). At the outbreak of the war a further assurance was made to Norway (Document Number TC-31), followed by another on the 6th of October (Document Number TC-32). On the 6th of September, 4 days after his assurance, Hitler was discussing with Raeder the Scandinavian problem and his political intentions in regard to the Nordic states, expressed in Admiral Assman's diary

as: "a North Germanic community with limited sovereignty in close dependence on Germany."

On the 9th of October, 3 days after his most recent assurance, in his memorandum for the information of Raeder, Göring, and Keitel, Hitler was writing of the great danger of the Allies blocking the exits for U-boats between Norway and the Shetlands and of the consequent importance of "the creation of U-boat strongpoints outside these constricted home bases" (Document Number L-52). Where outside the constricted home bases if not in Norway?

It is significant that the very next day Dönitz submitted a report on the comparative advantages of the different Norwegian bases (Document C-5), having discussed the matter with Raeder some 6 days before (Document C-122). The strategic advantages were apparent to all these men and the hollowness of the defense that the invasion of Norway was decided upon because it was believed that the Allies were going to invade is completely exposed when you consider the statement in Hitler's memorandum preceding the passage I have just quoted, that (Document Number L-52):

> "Provided no completely unforeseen factors appear, their neutrality in the future is also to be assumed. The continuation of German trade with these countries appears possible even in a war of long duration."

Hitler saw no threat from the Allies at that time.

Rosenberg and Göring's deputy, Körner, had been in touch with Quisling and Hagelin as early as June and it is clear from Rosenberg's subsequent report that Hitler had been kept fully informed (Document Number 004-PS). In December the time for planning had arrived and the decision to prepare for invasion was accordingly taken at a meeting between Hitler and Raeder (Document Number C-66). It was not long before Keitel and Jodl issued the necessary directives and in due course as necessary, Göring, Dönitz, and Ribbentrop were involved.

On the 9th of October, as I have already said, Hitler was confident that there would be no danger to the Nordic states from the Allies. All the alleged intelligence reports contain no information which comes within miles of justifying an anticipatory invasion based—you might think it is laughable—on the doctrines of self-preservation. It is true that in February 1940 Raeder pointed out to him that if England did occupy Norway the whole Swedish supply of ore to Germany would be endangered (Document Number D-881), but on the 26th of March he advised that the Russo-Finnish conflict having ceased, the danger of an Allied landing was no longer considered serious. Nonetheless he went on to suggest that the German invasion, for which all the directives had been issued,

should take place at the next new moon, on the 7th of April (Document Number R-81). It is interesting to note that Raeder's own war diary signed by himself and his chief of staff operations records a similar opinion 4 days earlier. If further evidence were needed to show that the actual step was taken regardless of any risk of interference from the West, it is to be found in telegrams from the German ministers at both Oslo and Stockholm and from the German military attaché at Stockholm, advising the German Government that, far from being worried over invasion by the British, the Scandinavian Governments were apprehensive that it was the Germans who intended to invade (Documents Number D-843, D-844, D-845). Perhaps Jodl's comment in his diary for March that Hitler "is still looking for an excuse" (Document Number 1809-PS) with Raeder's lame explanation that this refers to the text of the diplomatic note which would have to be sent and Ribbentrop's assertion that he was informed of the invasion only a day or so before it was to take place are as conclusive as anything else of the dishonesty of this defense. Once again all these men in their different spheres were playing their appointed parts—notably, of course, Rosenberg, who paved the way, Göring, Raeder, Keitel, Jodl, and Ribbentrop who took the necessary executive action. Not one of them protested: Even Fritzsche's only defense is that he was not told until a very late stage when he was as usual required to broadcast. He does not suggest that he protested. Once again, a completely ruthless invasion of two countries was undertaken in breach of every treaty and assurance, solely because it was strategically desirable to have Norwegian bases and to secure Scandinavian ore.

And so it went on: Yugoslavia, her fate settled before the war, Greece, and then Soviet Russia. The German-Soviet Pact of the 23d of August 1939 paved the way. Complete worthlessness of a Ribbentrop signature is made clear by Hitler's memorandum 6 weeks later, where he remarked (Document Number L-52): "The trifling significance of treaties of agreement has been proved on all sides in recent years."

By the 18th of December 1940 it must have become apparent that the German hopes of overcoming the resistance of Great Britain—then and for many months holding the fort of freedom and democracy alone against an enemy never more powerful than at that time—were vain, and so the first directive was issued for an attack in another direction this time—against Soviet Russia (Document Number 446-PS). It is indeed true—and it is interesting—that on this occasion a number of the defendants did make some objection. Little Norway might be violated without protest: There was no danger there. There was happy acquiescence in the rape of the gallant Netherlands and of Belgium. But here was an enemy which

might perhaps strike fear in the heart of the bully. The defendants objected, of course, if at all, on purely military grounds, although Raeder does say that he was influenced by the moral wrong which a breach of the German Soviet treaty would involve. It is for you to say. These moral scruples which ought so properly to have manifested themselves on countless other occasions are only previously recorded when one of his officers wishes to marry a lady of doubtful reputation. The truth is that some of these men were beginning to become apprehensive. Great Britain's resistance had already begun to make them think. Was Hitler now taking on another enemy whom he could not defeat? Once the decision was taken, however, every one of them set to work to play his part with his usual disregard for all laws of morality or even decency.

In no single case did a declaration of war precede military action. How many thousands of innocent, inoffensive men, women, and children, sleeping in their beds in the happy belief that their country was and would remain at peace, were suddenly blown into eternity by death dropped on them without warning from the skies? In what respect does the guilt of any one of these men differ from the common murderer creeping stealthily to do his victims to death in order that he may rob them of their belongings?

In every single case, as the documents (Documents 386-PS, L-79) make clear, this was the common plan. The attack must be "blitzartig schnell"—without warning, with the speed of lightning—Austria, Czechoslovakia, Poland—Raeder repeating Keitel's directive for "heavy blows struck by surprise" (Document Number C-126)—Denmark, Norway, Belgium, Holland, Russia. As Hitler had said in the presence of a number of these men (Document Number L-79): "Considerations of right or wrong or treaties do not enter into the matter."

The killing of combatants in war is justifiable, both in international and in municipal law, only where the war itself is legal. But where a war is illegal, as a war started not only in breach of the Pact of Paris but without any sort of warning or declaration clearly is, there is nothing to justify the killing, and these murders are not to be distinguished from those of any other lawless robber bands.

Every one of these men knew of these plans at one stage or another in their development. Every one of these men acquiesced in this technique, knowing full well what it must represent in terms of human life. How can any one of them now say he was not a party to common murder in its most ruthless form?

But I am dealing now not with the murders which alone so well justify the condemnation of these men, but with their crime against

peace. Let me say something about the legal aspect of this matter, for it is one to the firm establishment of which His Majesty's Government of the United Kingdom, and indeed all the chief prosecutors here, attach great importance.

The distinguished speech by Professor Jahrreiss for the Defense was free of ambiguity. The effect was that though the Kellogg-Briand Pact and the other international declarations and treaties rendered aggressive war illegal, they did not make it criminal. In support of this contention it was argued that they could not have done so because any such attempt to make aggressive war a crime would be contrary to the sovereignty of states, and that, in any event, the entire system of prohibition of war had collapsed before the outbreak of the second World War and therefore ceased to be law. It was further argued that these treaties were not taken seriously by numerous jurists and journalists whose opinions were cited and were not really entitled to be treated seriously because they contained no provision for coping with the problem of the peaceful change of the *status quo*. With regard to the Pact of Paris itself, counsel contended that there could be no question of a criminal—or even unlawful—breach of that Pact of Paris because it left to each state, including Germany, the right to determine whether it was entitled to go to war in self-defense. Finally it was suggested that the state could not become the subject of criminal responsibility and that, if that proposition were not admitted, the crime was one of the German State and not of individual members of it, because in the German State which launched that war upon the world there were no individual wills but only one sovereign, uncontrolled, and final will—that of the dictator-Führer.

It might be enough for me to say that this entire line of arguments is beside the point and cannot be heard in this Court since it is in contradiction to the Charter. For the Charter lays down expressly that the planning—and I emphasize the word "planning"—preparation, initiation, or waging of a war of aggression or of a war in violation of international treaties, agreements, or assurances shall be considered crimes coming within the jurisdiction of the Tribunal. It would appear, therefore, that the only way in which the accused can escape liability is to show to the satisfaction of the Tribunal that these wars were not wars of aggression or in violation of treaties. They have not done that. That being so one asks what is the purpose of the argument which has been advanced in their behalf. Is it to deny the jurisdiction of this Tribunal in this matter? Or what is perhaps more probable, is it a political appeal to some outside audience which may be more easily impressed by the complaint that the accused are being made the object of *post factum* legislation?

Whatever its object, it is important that the argument should not go unchallenged. I am anxious not to take up time by repeating what I said in my opening statement on the change effected in the position of war in international law as the result of the long series of treaties, in particular the General Treaty for the Renunciation of War. I have submitted that that treaty, one of the most generally signed international treaties, established a rule of international law with a solemnity and clarity which is often lacking in customary international law; that the profound change which it produced, and this is important, although indeed the distinction between just and unjust wars had been recognized in medieval times, was reflected in weighty pronouncements of governments and statesmen. I submit that it rendered illegal recourse to war in violation of the treaty, and that there is no difference between illegality and criminality in a breach of law involving the deaths of millions and a direct attack on the very foundations of civilized life. Nor do I propose to take time by answering in detail the, if I may say so, strange chain of legal argument put forward by the Defense such as that the treaty had no effect attributed to it by its signatories on the ground that it was received in some quarters with disbelief or cynicism.

Even more curious to ordinary legal thinking is the reasoning that in any case that treaty—and the other treaties and assurances which followed it—had ceased to be legally binding by 1939 because by that time the entire system of collective security had collapsed. The fact that the United States declared its neutrality in 1939 was cited as an example of the collapse of the system as if the United States had been under any legal obligation to act otherwise. But what is the relevance of the fact that the system designed to enforce these treaties and to prevent and to penalize criminal recourse to war failed to work? Did the aggressions of Japan and Italy and the other states involved in the Axis conspiracy, followed by the German aggressions against Austria and Czechoslovakia, deprive those obligations of their binding effect simply because those crimes achieved a temporary success? Since when has the civilized world accepted the principle that the temporary impunity of the criminal not only deprives the law of its binding force but legalizes his crime?

And you will notice, incidentally, that in the case both of the Japanese and Italian aggressions, the Council and the Assembly of the League of Nations denounced these acts as violations both of the Covenant and of the General Treaty for the Renunciation of War and that in both cases sanctions were decreed. It may be that the policemen did not act as effectively as one could have wished them to act. But that was a failure of the policeman, not of the law.

But not content with the remarkable suggestion that by their very aggressions, because of the reluctance of the peace-loving states to take arms against the blackmail and the bullying which was directed against them, the aggressors had abrogated the law against aggression, the defendants have introduced some question of self-defense. They have not, indeed, really suggested that these wars were defensive wars. Not even Goebbels in his wildest extravagances went quite so far as that. It appears that what they seek to say is not that their wars were wars in self-defense, but that since the Pact of Paris not only left intact the right of states to defend themselves but also the sovereign right of each state to determine whether recourse to war in self-defense was justified in the circumstances, it did not in fact contain any legal obligation at all. That is, in our strong submission, a wholly fallacious argument. It is true that in the declarations preceding and accompanying the signature and the ratification of the Pact of Paris, self-defense was not only recognized as an inherent and inalienable right of the parties to the treaty, but its signatories reserved for themselves the exclusive right of judging whether circumstances called for the exercise of that right.

The question is whether this reservation of self-defense destroyed the purpose and the legal value of the treaty. If Germany was entitled to have recourse to war in self-defense and if she was free to determine in what circumstances she was permitted to exercise the right of self-defense, can she ever be considered to have violated the solemn obligation of the treaty? That question counsel of the defense sought to answer in the negative. But that answer amounts to an assertion that that solemn treaty subscribed to by more than sixty nations is a scrap of paper devoid of any meaning at all, and it would result in this—that every prohibition or limitation of the right of war would be a nullity if it expressly provides for the right of self-defense, and I invite the Tribunal emphatically to consign that parody of legal reasoning to where it properly belongs.

Neither the Pact of Paris nor any other treaty was intended to—or could—take away the right of self-defense. Nor did it deprive its signatories of the right to determine, in the first instance, whether there was danger in delay and whether immediate action to defend themselves was imperative; and that only is the meaning of the express proviso that each state judges whether action in self-defense is necessary. But that does not mean that the state thus acting is the ultimate judge of the propriety and of the legality of its conduct. It acts at its peril. Just as the individual is answerable for the exercise of his common law right of defense, so the

state is answerable if it abuses its discretion, if it transforms "self-defense" into an instrument of conquest and lawlessness, if it twists the natural right of self-defense into a weapon of predatory aggrandizement and lust. The ultimate decision as to the lawfulness of action claimed to be taken in self-defense does not lie with the state concerned, and for that reason, the right of self-defense, whether expressly reserved or implied, does not impair the capacity of a treaty to create legal obligations against war.

Under the Covenant of the League of Nations, Japan was entitled to decide in the first instance whether events in Manchuria justified resort to force in self-defense. But it was left to an impartial body of enquiry to find, as it did find, that there was in fact no justification for action in self-defense and to mention a more recent example, Article 51 of the Charter of the United Nations lays down that nothing in the Charter shall impair the inherent right of individual or collective self-defense in case of armed attack. But it expressly leaves to the Security Council the power of ultimate action and determination. It is to be hoped that the judgment of this Tribunal will discourage, and discourage with appropriate finality, any further reliance on the argument that, because a treaty reserved for the signatories the right of action in self-defense, it becomes, for that reason, incapable of imposing upon the signatories any effective legal obligation against war.

I will now turn to the argument that the motion of criminal responsibility is incompatible with the idea of national sovereignty. A state may, and this Professor Jahrreiss conceded, commit an offense against international law, but he contends that to make it criminally responsible and punishable would be to deny the sovereignty of the state.

It is strange to see the accused who in their capacity as the German Government overran most of the states of Europe, who trampled brutally upon their sovereign independence, and who with boastful and swaggering cynicism made the sovereignty of the conquered states subservient to the new conception of the "Grossraumordnung"—it is strange to see these defendants appealing to the mystic virtues of the sanctity of state sovereignty, and perhaps it is not less remarkable to find them invoking orthodox international law to protect the defeated German State and its rulers from just punishment at the hands of the victorious powers. But there is no rule of international law which they can call in aid to this regard.

In a sense these proceedings are not concerned with punishing the German State. They are concerned with the punishment

of individuals. But it might seem strange if individuals were criminally responsible for the acts of the state if such acts by the state were not themselves crimes. There is, in our submission, no substance at all in the view that international law rules out the criminal responsibility of states and that since, because of their sovereignty, states cannot be coerced, all their acts are legal. Legal purists may contend that nothing is law which is not imposed from above by a sovereign power body having the power to compel obedience. That idea of the analytical jurists has never been applicable to international law. If it had, the undoubted obligation of states in matters of contract and tort could not exist.

It may be true that in international relationships prior to the war, there was no super-sovereign body which at the same time imposed international laws and enforced them. But, at least in the international field, the existence of law has never been dependent on the existence of a correlated sanction external to the law itself. International law has always been based on the element of common consent and where you have a body of rules which, whether by common consent or treaty, are obligatory upon the members of the international community, those rules are the laws of that community although the consent has not been obtained by force, and although there may be no direct or external sanction to secure obedience. The fact is that absolute sovereignty in the old sense is, very fortunately, a thing of the past. It is a conception which is quite inconsistent with the binding force of any international treaty.

In the course of the work of the Permanent Court of International Justice, it became a stock argument to rely on state sovereignty in support of the opinion that, as states are sovereign, treaty obligations entered into by them ought to be at least interpreted restrictively. The court consistently discouraged that view. In its very first judgment—a judgment given against Germany in the Wimbledon case—it rejected the plea of sovereignty as a reason for the restrictive interpretation of obligations in treaties. The court declined to see in a treaty, by which a state undertook to observe a definite line of conduct, an abandonment of its sovereignty and the court reminded Germany that the very right to enter into international engagements is an attribute of state sovereignty. As a philosophical proposition the right to contract and the right to freedom of action too, I suppose, present an eternal antithesis. But just as individuals secure their freedom by adherence to their laws, so may sovereign states maintain their own individual status; the view that since states are sovereign they cannot be coerced has long since been abandoned. The Covenant

of the League of Nations made provision, in Article 16, for sanctions against sovereign states—sanctions being only another name for coercion, probably coercion of a punitive character. The Charter of the United Nations has followed suit—much more decisively. It is true that, because of the absence of a competent compulsory jurisdiction, there is no judicial precedent for states being arraigned before a criminal tribunal. But that is equally true of the undoubted civil responsibilities of states, for apart from treaty there is no compulsory jurisdiction in any international tribunal to adjudicate upon them.

The first man tried for murder may have complained that no court had tried such a case before. The methods of procedure, the specific punishments, the appropriate courts, can always be defined by subsequent proclamation. The only innovation which this Charter has introduced is to provide machinery, long overdue, to carry out the existing law, and there is no substance in the complaint that the Charter is a piece of *post factum* legislation either in declaring wars of aggression to be criminal, or in assuming that the state is not immune from criminal responsibility.

But then it is argued, even if the state is liable, it is only the state and not the individual who can be made responsible under international law. That argument is put in several ways. States only, it is said, and not individuals, are the subject of international law. But there is no such principle of international law. One need only mention the case of piracy or breach of blockade, or the case of spies, to see that there are numerous examples of duties being imposed by international law directly upon individuals. War crimes have always been recognized as bringing individuals within the scope of international law. In England and the United States our courts have invariably acted on the view that the accepted customary rules of the law of nations are binding upon the subject and the citizen, and the position is essentially the same in most countries. In Germany itself, Article 4 of the Weimar Constitution laid it down that generally recognized rules of international law must be regarded as an integral part of German Federal Law and what can it mean in effect, save that the rules of international law are binding upon individuals? Shall we depart from that principle merely because we are here concerned with the gravest offense of all—crimes against the peace of nations and crimes against humanity? The law is a living, growing thing. In no other sphere is it more necessary to affirm that the rights and duties of states are the rights and duties of men and that unless they bind individuals they bind no one. It is a startling proposition that those who aid and abet, who counsel and procure the commission

of a crime are themselves immune from responsibility. The international crime does not differ from the municipal offense in this respect.

Then the argument is put in another way. Where the act concerned is an act of state, those who carry it out as the instruments of the state are not personally responsible and they are entitled, it is claimed, to shelter themselves behind the sovereignty of the state. It is not suggested, of course, that this argument has any application to war crimes, and we submit each of these men is guilty of countless war crimes. It might be enough to brush the matter aside as academic. But that course perhaps would diminish the value which these proceedings will have on the subsequent development of international law. Now it is true that there is a series of decisions in which courts have affirmed that one state has no authority over another sovereign state or over its head or representative. Those decisions have been based on the precepts of the comity of nations and of peaceful and smooth international intercourse. They do not in truth depend upon any sacrosanctity of foreign sovereignty, except insofar as the recognition of sovereignty in itself promotes international relations. They really afford no authority for the proposition that those who constitute the organs of incorporate states, those who are behind the state, are entitled to rely on the metaphysical entity which they create and control when, by their very directions, that state sets out to destroy that very comity on which the rules of international law depend. Suppose a state were to send a body of persons into the territory of another state with instructions to murder and to rob. Would those persons carrying out those orders be immune because in the fulfillment of their criminal design they were acting as the organs of another state? Suppose the individuals who had ordered the predatory expedition were to fall into the hands of the state attacked—could they plead immunity? In my submission clearly not. Yet the case put is exactly the case which occurred here. The truth is that this attempt to clothe crime with impunity because the motive was political rather than personal invokes no principle of law but is based on arbitrary political doctrines more appropriate to the sphere of power politics than to that in which the rule of law prevails.

And finally it is said that these wretched men were powerless instruments in Hitler's hands, ordered to do that which reluctantly, so they say, they did. The defense of superior orders is excluded by the Charter although Article 8 provides that it may in appropriate cases be considered in mitigation of punishment, if the Tribunal thinks that justice so requires. But the Charter no more than declares the law. There is no rule of international law which

provides immunity for those who obey orders which—whether legal or not in the country where they are issued—are manifestly contrary to the very law of nature from which international law has grown. If international law is to be applied at all, it must be superior to municipal law in this respect, that it must consider the legality of what is done by international and not by municipal tests. By every test of international law, of common conscience, of elementary humanity, these orders—if indeed it was in obedience to orders that these men acted—were illegal. Are they then to be excused?

The dictatorship behind which these men seek to shelter was of their own creation. In the desire to secure power and position for themselves they built up the system under which they received their orders. The continuance of that system depended on their continued support. Even if it were true that—as Jodl suggested—these men might have been dismissed, perhaps imprisoned, had they disobeyed the orders which they were given, would not any fate have been better than that they should have lent themselves to these things? But it was not true. These were the men in the inner councils, the men who planned as well as carried out; of all people the ones who might have advised, restrained, halted Hitler instead of encouraging him in his satanic courses. The principle of collective responsibility of the members of a government is not an artificial doctrine of constitutional law. It is an essential protection of the rights of man and the community of nations; international law is fully entitled to protect its own existence by giving effect to it.

Let me now pass to Counts Three and Four of the Indictment, the Counts dealing with War Crimes and what we have described, as in fact they are, as Crimes against Humanity.

And as to these, may I first make some comment on the legal position. About the law as to war crimes, little indeed need be said, because the law is clear enough and not in doubt. Here are crimes more terrible indeed in their extent than anything which had hitherto been known, but none the less well recognizable under the pre-existing rules of international law and clearly within the legitimate jurisdiction either of a national or of an international tribunal. There is no element of retroactivity here, no question of *post factum* law making, nor is there any shadow of novelty in the decision of the Charter that those who shared the ultimate responsibility for these frightful deeds should bear individual responsibility. It is true that the lawyers and the statesmen who, at The Hague and elsewhere in days gone by, built up the code of rules and the established customs by which the world has sought to

mitigate the brutality of war and to protect from its most extreme harshness those who were passive noncombatants, never dreamed of such wholesale and widespread slaughter. But murder does not cease to be murder merely because the victims are multiplied ten-million-fold. Crimes do not cease to be criminal because they have a political motive. These crimes were many and manifold. It is not useful to catalog them here. They vary most considerably in the numbers of victims. There are the 50 murdered prisoners of war who escaped from Stalag Luft III; the hundreds of commandos and airmen who were exterminated; there are the thousands of civilian hostages put to death; the tens of thousands of sailors and passengers who perished in a piratical campaign of terror; there are the hundreds of thousands of prisoners of war, especially Russians, and of civilians who met their death because of the rigors and cruelties to which they were exposed, if not by outright murder, and there are the many millions murdered outright, or by the slower method of deliberate starvation, 6 million of them for no better reason than that they were of Jewish race or faith.

The mere number of victims is not the real criterion of the criminality of an act. The majesty of death, the compassion for the innocent, the horror and detestation of the ignominy inflicted upon man—man created in the image of God—these are not the subjects of mathematical calculation. Nonetheless, somehow, numbers are relevant. For we are not dealing here with the occasional atrocities which are perhaps an incident in any war. It may be that war develops the good things in man; it certainly brings out the worst. It is not a game of cricket. In any war, in this war no doubt there have been—and no doubt on both sides—numbers of brutalities and atrocities. They must have seemed terrible enough to those against whom they were committed. I do not excuse or belittle them. But they were casual, unorganized, individual acts. We are dealing here with something entirely different; with systematic, wholesale, consistent action, taken as a matter of deliberate calculation—calculation of the highest level. And so the principal war crime in extent as in intensity with which these men are charged is the violation of the most firmly established and least controversial of all the rules of warfare, namely, that noncombatants must not be made the direct object of hostile operations. What a mockery the Germans sought to make of the Fourth Hague Convention on the laws and customs of war—convention which merely formulated what was already a fundamental rule: "Family honor and rights, the lives of persons and private property, as well as religious convictions and practices, must be respected."

The murdering on the orders of the German Government, whose members are here in the dock, in the territory occupied by its military forces, whose leaders are here in the dock, of millions of civilians, whether it was done in pursuance of a policy of racial extermination, as the result of, or in connection with, the deportation of slave labor, in consequence of the desire to do away with the intellectual and political leaders of the countries which had been occupied or was part of the general application of terror through collective reprisals upon the innocent population and upon hostages—this murdering of millions of noncombatants is a war crime. It may indeed be a crime against humanity as well. Both imagination and intellect, shattered by the horror of these things, recoil from putting the greatest crime in history into the cold formula already described in the textbooks as a war crime. Yet it is important to remember that that is what these crimes were. Irrespective, in the main, of where they were committed or of the race or nationality of the victims, these were offenses upon the civilian population, contrary to the laws of war in general and to those of belligerent occupation in particular. The truth is that murder, wholesale, planned, and systematic, became part and parcel of a firmly entrenched and apparently secure belligerent occupation. That that was a war crime no one has sought to dispute.

But some attempt has been made to canvass the illegality of three other classes of action with which also these men stand charged: Deportation to Germany for forced labor; the crimes at sea in connection with submarine warfare, and the shooting of commandos. And let me shortly examine these matters.

The deportation of the civilian population for forced labor is, of course, a crime both according to international custom and to conventional international law as expressed in the Hague Convention. Article 46 of Hague Convention Number IV enjoins the occupying powers to respect "family honor and rights" and "the lives of persons." Article 52 of the same convention lays down that:

> "Services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation"—and that—"they shall be in proportion to the resources of the country and of such a nature as not to involve the population in the obligation of taking part in the operations of war against that country."

With these simple and categorical provisions we have to contrast the staggering dimensions of the operation which the Defendant Sauckel directed and in which the other defendants participated,

the ruthlessness with which peaceful citizens were torn from their families, surroundings, and employment, the manner in which they were transported, the treatment which they received on arrival, the conditions in which they worked and died in thousands and tens of thousands, and the kind of work which they were compelled to perform as direct helpers in the production of arms, munitions, and other instruments of war against their own country, and against their own people. How can all that be reconciled with the law?

It seems to have been suggested that the prohibition of the Law of Nations relating to deportation had in some way become obsolete in the face of the modern development of totalitarian war requiring the vastest possible use and exploitation of the material and labor resources of the occupied territory. I confess I do not understand how the extent of the activities a belligerent imposes on himself, the size of the effort he needs to make in order to avoid defeat, can enlarge his rights against peaceful noncombatants or enable him to brush aside the rules of war. We cannot make these *post factum* repeals of accepted international law in favor of the lawbreakers.

Nor is there a shadow of a right to invoke any material change in conditions as a justification for their crimes at sea—crimes which cost the lives of 30,000 British seamen alone. We need not base our case here solely on the mere violation of the customary rules of warfare as embodied in the London Protocols of 1930 and 1936, fully subscribed to as they were by Germany and prohibiting sinking without warning, or even with warning if proper provision had not been made for the safety of passengers and crew. We need not concern ourselves with the niceties of argument whether the practice of arming merchantmen affects the position.

Nor need we take time to examine the astonishing proposition that the sinking of neutral shipping was legalized by the process of making a paper order excluding such neutral ships not from some definite war zone over which Germany exercised control but from vast areas of the seas. For there is one matter at least about which nobody questions or puts questions to the law.

If you are satisfied that orders were given that survivors should not be rescued, that steps should be taken to prevent the shipwrecked from surviving, for the use of such weapons that there could be no question of survivors, you will have no doubt that what was done was contrary to law. It is no answer that to allow noncombatants to survive entailed greater risk to the attackers. The murderer is not excused because he says that it was necessary

to kill the victim he had violated lest he should subsequently identify him.

So also in regard to the orders for the execution of commandos. New methods of warfare, new forms of attack, do not in themselves repeat existing established rules of law. The sanctity of the life of the soldier in uniform, who surrenders after the accomplishment of his mission and who committed no war crime prior to his capture, is, and I ask you to say, must remain an absolute principle of international law. Those who, for whatever motive, trample upon it in disregard of law, in disregard of humanity, in disregard of chivalry, must pay the penalty when at last the law is vindicated.

I shall not examine this matter further or detail the other types of war crimes charged in the Indictment. For that these matters, various in their kind or method, were crimes under established law is not in doubt. The Tribunal will be concerned only to affirm the law and to decide upon the measure of these prisoners' involvement in its breach.

Let me, however, before I turn to questions of fact refer to the Fourth Count of the Indictment, the Crimes against Humanity. It is convenient, I think, to deal with these matters together for insofar as they were committed during the war, to some extent they overlap and in any case they are interconnected. The war crimes were in their very enormity crimes against humanity. The crimes against humanity were not seldom war crimes, larger still. Moreover, the crimes against humanity with which this Tribunal has jurisdiction to deal are limited to this extent—they must be crimes the commission of which was in some way connected with, in anticipation of or in furtherance of the crimes against the peace or the war crimes *stricto sensu* with which the defendants are indicted. That is the qualification which Article 6(c) of the Charter introduces. The considerations which apply here are, however, different to those affecting the other classes of offense, the crime against peace or the ordinary war crime. You have to be satisfied not only that what was done was a crime against humanity but also that it was not purely a domestic matter but that directly or indirectly it was associated with crimes against other nations or other nationals, in that, for instance, it was undertaken in order to strengthen the Nazi Party in carrying out its policy of domination by aggression, or to remove elements such as political opponents, the aged, the Jews, the existence of which would have hindered the carrying out of the total war policy.

Pursuing that for a moment, the racial policy against the Jews was, as I have said, simply one facet of the Herrenvolk doctrine.

In *Mein Kampf* Hitler had said that the most decisive factor in the German collapse in 1918 was "the failure to recognize . . . the racial problem and the Jewish menace." The attack on the Jews was at once a secret weapon—an enduring fifth column weapon—to split and weaken the democracies and a device for unifying the German people for war. Himmler made it clear in his speech on 4 October 1943, that the treatment meted out to German Jews was closely connected with the war policy. He said:

> "For we know how difficult we should have made it for ourselves if . . . we still had Jews today in every town as secret saboteurs, agitators, and trouble mongers."

So the crime against the Jews, insofar as it is a crime against humanity and not a war crime as well, is one which we indict because of its close association with the crime against the peace. That is, of course, a very important qualification on the Indictment of the Crimes against Humanity which is not always appreciated by those who have questioned the exercise of this jurisdiction. But subject to that qualification we have thought it right to deal with matters which the criminal law of all countries would normally stigmatize as crimes—murder, extermination, enslavement, persecution on political, racial, or economic grounds. These things done against belligerent nationals, or for that matter, done against German nationals in belligerent occupied territory would be ordinary war crimes the prosecution of which would form no novelty. Done against others they would be crimes against municipal law except insofar as German law, departing from all the canons of civilized procedure, may have authorized them to be done by the State or by persons acting on behalf of the State. Although, so to do, does not in any way place those defendants in greater jeopardy than they would otherwise be; the nations adhering to the Charter of this Tribunal have felt it proper and necessary in the interest of civilization to say that these things even if done in accordance with the laws of the German State, as created and ruled by these men and their ringleader, were, when committed with the intention of affecting the international community—that is in connection with the other crimes charged—not mere matters of domestic concern but crimes against the law of nations. I do not minimize the significance for the future of the political and jurisprudential doctrine which is here implied. Normally international law concedes that it is for the state to decide how it shall treat its own nationals; it is a matter of domestic jurisdiction. And although the Social and Economic Council of the United Nations Organization is seeking to formulate a charter of the Rights of Man, the Covenant of the League of Nations and the Charter of the United Nations Organization do recognize that general position. Yet international law has in the

past made some claim that there is a limit to the omnipotence of the state and that the individual human being, the ultimate unit of all law, is not disentitled to the protection of mankind when the state tramples upon his rights in a manner which outrages the conscience of mankind. Grotius, the founder of international law, had some notion of that principle when—at a time when the distinction between the just and the unjust war was more clearly accepted than was the case in the nineteenth century—he described as just a war undertaken for the purpose of defending the subjects of a foreign state from injuries inflicted by their ruler. He affirmed, with reference to atrocities committed by tyrants against their subjects, that intervention is justified for "the right of social connection is not cut off in such a case." The same idea was expressed by John Westlake, the most distinguished of British international lawyers, when he said:

> "It is idle to argue in such cases that the duty of neighboring peoples is to look quietly on. Laws are made for men and not creatures of the imagination and they must not create or tolerate for them situations which are beyond endurance."

The same view was acted upon by the European powers which in time past intervened in order to protect the Christian subjects of Turkey against cruel persecution. The fact is that the right of humanitarian intervention by war is not a novelty in international law—can intervention by judicial process then be illegal? The Charter of this Tribunal embodies a beneficent principle—much more limited than some would like it to be—and it gives warning for the future. I say, and repeat again, gives warning for the future, to dictators and tyrants masquerading as a state that if, in order to strengthen or further their crimes against the community of nations, they debase the sanctity of man in their own country they act at their peril, for they affront the international law of mankind.

As for the criticism which is made of retroactive law, that it makes that criminal which men did not know to be wrong when they committed it—what application can that have here? You will not disregard it even if these defendants time after time disregard it, the countless warnings that were given by foreign states and foreign statesmen on the course which was being pursued by Germany before the war. No doubt these men counted on victory, their whole policy was based on the notion of success; they little thought that they would be brought to account. But can any one of them be heard to say that if he knew about these things at all he did not know them to be wrongs crying out to High Heaven for vengeance?

Let me deal with what they did to prisoners of war, for this alone, the clearest crime of all, demands their conviction and will for all time stain the record of German arms.

On the 8th of September 1941, final regulations for the treatment of Soviet prisoners of war in all prisoner-of-war camps were issued, signed by General Reinecke, the head of the prisoners of war department of the High Command. They were the result of agreement with the SS and read as follows (Document Number 1519-PS):

"The Bolshevist soldier has therefore lost all claim to treatment as an honorable soldier in accordance with the Geneva Convention.... The order for ruthless and energetic action must be given at the slightest indication of insubordination especially in the case of Bolshevist trouble mongers. Insubordination, active or passive resistance, must be broken immediately by force of arms (bayonets, butts, and firearms).... Anyone carrying out the order who does not use his weapons or does so with insufficient energy is punishable.... Prisoners of war attempting to escape are to be fired on without previous challenge. No warning shot must ever be fired.... The use of arms against prisoners of war is, as a rule, legal.... Camp police must be formed of suitable Soviet prisoners of war in the camp.... Within the wire fence the camp police may be armed with sticks, whips, or other similar weapons to enable them to carry out their duties effectively."

The regulations go on to order the segregation of civilians and politically undesirable prisoners of war taken during the Eastern campaign. After prescribing the importance for the Armed Forces of ridding themselves of all those elements among the prisoners of war which could be considered as the driving forces of Bolshevism, emphasis is placed on the need for special measures, free from bureaucratic administrative influences, and accordingly their transfer to the Security Police and the SD is given as the way to reach the "appointed goal."

That Keitel, who is directly responsible for this order, was issuing it with full knowledge of its implications is made clear by the memorandum of Admiral Canaris dated 15 September 1941, protesting against it, and correctly stating the legal position, as follows (Document Number EC-338):

"The Geneva Convention for the treatment of prisoners of war is not binding in the relationship between Germany and the U.S.S.R. Therefore only the principles of general international law on the treatment of prisoners of war apply. Since the eighteenth century these have gradually been established along the lines that war captivity is neither revenge nor punishment but solely protective custody the only purpose of which is to prevent the prisoners of war from further participation in the war. This principle was developed in

accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people.... The decrees for the treatment of Soviet prisoners of war enclosed... are based on a fundamentally different viewpoint."

Canaris went on to point out the shocking nature of the orders for use of arms by guards and for equipping the camp police with clubs and whips. On this memorandum, as you were reminded this morning, Keitel noted:

"The objections arise from the military concept of chivalrous warfare. This is the destruction of an ideology. Therefore, I approve and back the measures. K."

Any possible doubt that Keitel knew that the transfer to the Security Police and SD was intended to mean liquidation can hardly survive study of that document. Canaris writes of the screening, as it is called, of the undesirables: "The decision over their fate is effected by the action detachments of the Security Police and the SD," on which Keitel, underlining Security Police, comments "very efficient," whilst on the further criticism by Canaris that the principles of their decision are unknown to the Wehrmacht authorities, Keitel comments "not at all."

The parallel instruction to the Security Police and SD recites the agreement with the High Command and after enjoining the closest co-operation between the members of the police teams and the commandants of the camp and listing those to be handed over, it reads (Document 502-PS):

"Executions must not be held in the camp.... If the camps in the Government General are located in the immediate vicinity of the border the prisoners are to be taken if at all possible to former Soviet Russian territory for special treatment."

It is not necessary to remind you of the volume of evidence with regard to the numbers of Soviet and Polish prisoners in concentration camps. Their treatment needs no further reminder than the report by the commandant of Gross-Rosen Concentration Camp who on the 23d of October 1941 reports the shooting of 20 Russian prisoners between 5 and 6 o'clock that day and Müller's circular from the same file, which states (Document Number 1165-PS):

"The commanders of the concentration camps are complaining that five to ten percent of the Soviet Russians destined for execution are arriving in the camps dead or half dead. Therefore the impression has arisen that the Stalags are getting rid of such prisoners in this way.

"It was particularly noted that, when marching, for example from the railroad station to the camp, a rather large number

of prisoners of war collapsed on the way from exhaustion, either dead or half dead, and had to be picked up by a truck following the convoy.

"It cannot be prevented that the German people take notice of these occurrences."

Did any of these defendants take notice of these occurrences that could not be hidden from the German people?

I go on:

"Even if the transportation to the camps is generally taken care of by the Wehrmacht, the population will still attribute this situation to the SS.

"In order to prevent, if possible, similar occurrences in the future, I therefore order that, effective from today on, Soviet Russians declared definitely suspect and obviously marked by death (for example with typhus) and who therefore would not be able to withstand the exertions of even a short march on foot, shall in the future, as a matter of basic principle, be excluded from the transport into the concentration camp for execution.

"I request that the leaders of the Einsatzkommandos be correspondingly informed of this decision without delay."

On the 2d of March 1944, the Chief of the Sipo and SD forwarded to his various branch offices a further order of the OKW for the treatment of prisoners recaptured after attempted escape (Document Number L-158). With the exception of British and Americans, who were to be returned to the camps, the others were to be sent to Mauthausen and to be dealt with under "Operation Kugel" which, as the Tribunal will remember, involved immediate shooting. Inquiries by relatives, other prisoners, the Protecting Power, and the International Red Cross were to be dealt with in such a way that the fate of these men, soldiers whose only crime had been to do their duty, should be forever hidden (Document 1650-PS).

It was shortly after the issue of the Kugel order that 80 British officers of the R.A.F. made an attempt to escape from Stalag Luft III at Sagan. The defendants directly connected with this matter have not denied that the shooting of 50 of these officers was deliberate murder and was the result of a decision at the highest level. There can be no question that Göring, Keitel, and probably Ribbentrop, participated in this decision and that Jodl and Kaltenbrunner and, if he did not actually participate, Ribbentrop, were all aware of it at the time.

Göring's participation is a matter of inevitable inference from the following three facts:

First: The order was given by Hitler.

Second: Westhoff of the Prisoners of War Organization of the OKW says he was informed by Keitel that Göring had blamed him for the escape at the meeting at which the order was decided upon (Document Number UK-48).

Third: In Göring's own Ministry which was responsible for the treatment of R.A.F. prisoners of war, Walde heard of the order on the 28th of March at the meeting of executives and told General Grosch. Grosch informed Förster, who went straight to Milch, Göring's Chief of Staff, and returned to inform Grosch that Milch had been told, and had made the necessary notes (Documents Number D-730, D-731).

You will say whether you do not consider the denials of Göring and Milch to be mere perjury.

Keitel admits that Hitler ordered transfer to the SD and that he "was afraid" they might be shot. He told his officers Graevenitz and Westhoff: "We must set an example. They will be shot—probably some have been shot already." And when Graevenitz protested, he replied: "I do not care a damn."

On this evidence of his own officers, surely his complicity is clear in this matter.

Jodl said that when Himmler was reporting the escape, he was in the next room telephoning, he heard a very loud discussion and on going to the curtain to hear what it was, he learned that there had been an escape from Sagan. It is incredible in these circumstances that even if he did not take part in the decision he did not at any rate know of it from Keitel immediately after the meeting. And knowing of it, he carried on playing his part in the conspiracy.

As to Kaltenbrunner's guilt, the meeting at which Walde was informed of the decision was with Müller and Nebe, Kaltenbrunner's subordinates. Schellenberg's evidence of the discussion between Nebe, Müller, and Kaltenbrunner about this time on the subject of an International Red Cross inquiry about 50 English or American prisoners of war is conclusive. He heard Kaltenbrunner providing his subordinates with the answer to be given to this inconvenient inquiry and one cannot doubt his full knowledge of this matter. The reply sent to the Protecting Power and the International Red Cross by Ribbentrop is now admitted on all hands to have been a pack of lies. Is it to be believed that he also was not a party to the decision?

That any of these men would have been prepared to take such a decision themselves or to comply with it if taken by Hitler is, we submit, clear from the correspondence providing for the lynching or shooting of what were called terror-fliers. These documents show that neither Keitel nor Jodl had any scruples in the matter while

both Göring and Ribbentrop agreed to the draft order (Documents Number D-777, D-783, D-784).

You will remember the meetings which preceded that correspondence—first a meeting between Göring, Ribbentrop, and Himmler at which it was agreed to modify "the original suggestion made by the Reich Foreign Minister who wished to include every type of terror attack on the German civilian population as justifying action" (Document Number 735-PS), and which concluded that "lynch law would have to be the rule."

At the subsequent meeting between Warlimont and Kaltenbrunner it was agreed that "those aviators who escaped lynch law would in accordance with a procedure to be devised . . . be handed over to the SD for special treatment."

Finally Keitel's note on the file: "I am against legal procedure. It does not work out."

Similar evidence is provided when we consider the attitude taken up in February 1945, when Hitler wished to renounce the Geneva Convention. Dönitz advised that: "It would be better to carry out measures considered necessary without warning and at all costs to save face with the outside world" (Document Number C-158), a decision with which Jodl and Ribbentrop's representative agreed. Their defense that this was merely a technical measure and that they did not in fact intend any concrete action is disposed of by Jodl's memorandum on the whole question (Document Number D-606):

> "Just as it was wrong in 1914 that we ourselves solemnly declared war on all the states which for a long time had wanted to wage war against us and through this took the whole guilt of the war on our shoulders before the outside world, and just as it was wrong to admit that the necessary passage through Belgium in 1914 was our own fault, so it would be wrong now to repudiate openly the obligations of international law which we accepted and thereby to stand again as the guilty party before the whole world."

After this remarkable statement he added that there was nothing to prevent them in fact from sinking an English hospital ship as a reprisal and then expressing regret that it was a mistake . . .

THE PRESIDENT: Would it be convenient to you to sit at 9:45 in the morning? The Tribunal anticipates in these circumstances we might be able to finish at 1 o'clock or shortly afterward. In any event, we would sit on in order to finish.

SIR HARTLEY SHAWCROSS: I think I would be very much obliged if the Court would do that.

[The Tribunal adjourned until 27 July 1946 at 0945 hours.]

ONE HUNDRED AND EIGHTY-EIGHTH DAY

Saturday, 27 July 1946

Morning Session

SIR HARTLEY SHAWCROSS: May it please the Tribunal: Yesterday when we recessed I had been dealing with the War Crimes in *stricto sensu* and in particular with the murder of the RAF officers from Stalag Luft III.

I want now very shortly to consider the question of the employment of prisoners of war. Under Article 31 of the Geneva Convention it might have been permissible to employ prisoners on certain work in connection with the raw materials of the armament industry. But the statement made by Milch at the Central Planning Board on the 16th of February 1943 in the presence of Speer and Sauckel had no legal justification at all. He said, if you will remember, and I quote:

> "We have made the request that a certain percentage of men in our ack-ack artillery must be Russians. 50,000 will be taken altogether, 30,000 are already employed as gunners. This is an amusing thing that Russians must work the guns" (Document Number R-124).

That was quite obviously flagrantly illegal. Nobody could have had the faintest doubt about it. The minutes record no protest whatever. It has not been suggested that Göring or any of the others who must have read the minutes and known what was going on, regarded this outrage by the effective head of the German Air Force as being in any way unusual.

Himmler's cynical words spoken at Posen on the 4th of October 1943 on the subject of the Russian prisoners captured in the early days of the campaign ought again to be put on record for history. I quote:

> "At that time we did not value the mass of humanity as we value it today as raw material, as labor. What, after all, thinking in terms of generations, is not to be regretted but is now deplorable by reason of the loss of labor, is that the prisoners died in tens and hundreds of thousands of exhaustion and hunger" (Document Number 1919-PS).

I turn now to the murder of the Commandos.

The evidence with regard to the Commando Order of the 18th of October 1942 (Document Number 498-PS) directly involves Keitel, Jodl, Dönitz, Raeder, Göring, and Kaltenbrunner. By Article 30 of the Hague Rules, and I quote: "A spy taken in the act shall not be punished without previous trial." And even the regulations printed in the book of every German soldier provide, and I quote: "No enemy can be killed who gives up, not even a partisan or a spy. These will be brought to punishment by the courts." These men were not spies; they were soldiers in uniform. It is not suggesting that any man dealt with under the order was ever given a trial before he was shot. Legally there can be no answer to the guilt of any of those defendants who passed on or who applied this wicked order, an order which Jodl admitted to be murder and in respect of which Keitel, confessing his shame, admitted its illegality.

Raeder admitted that it was an improper order. Even Dönitz stated that now he knew the true facts he no longer regarded it as correct. The only defenses put forward have been that the individual in question did not personally carry it out, that they regarded the statement in the first paragraph of the order as justifying the action by way of reprisal, that they did their best to minimize its effect and that it was not up to the individual to question the directives of a superior. But no one has seriously disputed that handing over to the SD—in the context here—meant shooting without a trial.

The answer to these defenses, insofar as the defenses are not purely dishonest, is that the security precautions provided in the order itself were the plainest indication that the facts stated in the first paragraph did not constitute any justification which would bear the light of day. No higher degree of precaution accompanied the "Kugel Order," "Nacht und Nebel Order," or any other of their brutal orders. That the shackling incident at Dieppe had nothing to do with it appears from Jodl's staff memorandum of the 14th of October 1942 (Document Number 1266-PS) which states in terms that the Führer's aim was to prevent the Commando method of waging war by dropping small detachments who did great damage by demolitions, *et cetera,* and then surrendered.

The cancellation of the order in 1945 (Document Number D-649) is further evidence that those responsible for it recognized their guilt, guilt which was perhaps best summarized by the entry in the War Diary of the Naval War Staff with regard to the shooting of the Commandos taken in uniform at Bordeaux: "Something new in international law" (Document Number D-658). Yet Raeder and his Chief of Staff were prepared to initial that entry. Kaltenbrunner's knowledge is clearly shown by his letter to the Armed Forces planning staff of the 23d of January 1945 (Document

Number 535-PS) referring to it in detail and disputing its application to particular categories.

Other men have already been sentenced to death for execution of this order, men whose only defense was that they obeyed an order from their superiors. I refer to the members of the SD who were executed for the murder of the crew of Motor Torpedo Boat *345* in Norway, and General Dostler in Italy. Innumerable instances from their own records have been proved against these defendants. Shall they escape? You will remember the attitude of the Nazi People's Court in 1944 to the plea of superior orders (Document Number 3881-PS).

The Commando Order cannot compare in wickedness or brutality with the Nacht und Nebel Order (Night and Fog Decree) of the 7th of December 1941. The Hitler directive signed by Keitel, after prescribing the death penalty for offenses endangering the security or state of readiness of the occupying powers, orders the removal to Germany of offenders, other than those whose execution could be completed in a very short time, under circumstances which would deny any information with regard to their fate. And Keitel's covering letter of the 12th of December gives the reason:

> "Efficient and enduring intimidation can only be achieved either by capital punishment or by measures by which the relatives of the criminals and the population do not know the fate of the criminal. This aim is achieved when the criminal is transferred to Germany" (Document Number L-90).

It is interesting to contrast that statement written when Keitel thought that Germany was winning the war with his evidence before the Tribunal. He said, you will remember: "Penal servitude would be considered dishonorable by these patriots. By going to Germany they would suffer no dishonor."

This decree was still being enforced in February 1944 when the commanders of some 18 concentration camps were being reminded of its purpose and how to dispose of the bodies of the "Night and Fog" prisoners without revealing the place of death (Document Number D-569). The treatment of these prisoners was described by the Norwegian witness, Cappelen, and members of the Tribunal will not have forgotten his account of the transport of between 2,500 and 2,800 "Nacht und Nebel" prisoners from one concentration camp to another in 1945 when 1,447 died on the way. We who talk about the dignity of man, let us remember this, and I quote it again (Cappelen speaking):

> "... We could not walk fast enough and, seizing their rifles, they smashed in the heads of five ... they said in German: 'That is what happens to those who cannot walk properly' ... After walking for 6 to 8 hours we came to a station, a railway station. It was very cold and we had only striped

prison clothes on, and bad boots; but we said, 'Oh, we are glad that we have come to a railway station. It is better to stand in a cow truck than to walk in the middle of winter.' It was very cold, 10 to 12 degrees below zero (Centigrade). It was a long train with open cars. In Norway we call them sand cars and we were kicked on to those cars about 80 on each car.... In this car we sat for about five days without food—cold—and without water. When it was snowing we made like this *[indicating]* just to get some water into the mouth and, after a long, long time—it seemed to me years—we came to a place which I afterward learned was Dora. That is in the neighborhood of Buchenwald.

"Well, we arrived there. They kicked us down from the cars, but many were dead. The man who sat next to me was dead, but I had no right to get away. I had to sit with a dead man for the last day. I did not see the figures myself, naturally, but about a third or half of us were dead, getting stiff. And they told us that...—I heard the figure afterward in Dora—that the dead on our train numbered 1,447.

"Well, from Dora I do not remember so much because I was more or less dead. I have always been a man of good humor and high spirited, to help myself first and my friends; but I had nearly given up.... I was fortunate because Bernadotte's action came and we were rescued and brought to Neuengamme, near Hamburg; and when we arrived, there were some of my old friends, the student from Norway who had been deported to Germany, other prisoners who came from Sachsenhausen and other camps, and the few, comparatively few, Norwegian 'NN' prisoners who were living, all in very bad conditions. Many of my friends are still in the hospital in Norway. Some died after coming home."

In July 1944 a yet more drastic order followed the Night and Fog. On the 30th of that month Hitler issued the "Terror and Sabotage Decree" (Document Number D-762) providing that all acts of violence by non-German civilians in occupied territories should be combated as acts of terrorism and sabotage. These not overcome on the spot were to be handed over to the SD (Document Number D-763), women put to work, only children spared. Within a month Keitel extended the order to cover persons endangering security or war preparedness by any means other than acts of terrorism or sabotage (Document Number D-764), the usual secrecy requirements were laid down, restricting distribution in writing to a minimum. He then ordered that the Terror and Sabotage Decree was to form the subject of regular emphatic instruction to all personnel of the Armed Forces, SS and Police. It was to be extended to crimes affecting German interests, but not imperiling

the security or war preparedness of the occupying power. New regulations could be made by the agreement of particular commanders and higher SS chiefs. In other words any offense by any person in the occupied territories could be dealt with under this decree.

On the 9th of September 1944, a meeting was solemnly held between representatives of the High Command and the SS to discuss the relationship of the Night and Fog Order to the Terror and Sabotage Decree (Document Number D-767). It was considered that the Night and Fog Order had become superfluous and the meeting went on to consider the transfer of the 24,000 non-German civilians held under it by the SS to the SD. The meeting discussed the problem of certain neutrals who had been "turned into fog" by mistake. The German word "vernebelt" justifies the statement of the witness Blaha that the special and technical expressions used in concentration camps can only be said in German and cannot really be translated into any other language. It is perhaps superfluous to remind the Tribunal that when the Luftwaffe general in Holland asked for authority to shoot striking railwaymen (Document Number D-769), since the procedure of handing over to the SD under the decree was too roundabout, Keitel, in a reply, copies of which were sent both to the Admiralty and to the Air Ministry as well as to the principal commanders in occupied territories, agreed at once that if there was any difficulty in handing over to the SD, I quote: "... other effective measures are to be taken ruthlessly and independently ..." (Document Number D-770).

In other words, General Christiansen could shoot the railwaymen if he thought fit.

Let us not forget when we consider the problems of Europe in these days, that it is not easy for anyone who has not had to live in territory occupied by the Germans to realize the suffering and the state of terror and constant apprehension in which the peoples of Europe lived through those long years of subjection. It was Frank, who, writing on the 16th of December 1941, said: "As a matter of principle we shall have pity only for the German people and for no one else in the world" (Document Number USSR-223).

Save that they had no pity even for their own people, how faithfully these men carried out that principle.

I turn now to the attack on the partisans. If any doubt remained that the German Armed Forces were directed not by honorable soldiers but by callous murderers, it must be dissolved by the evidence as to the appalling ruthlessness with which it was sought to put down the partisans. The witness Ohlendorf said that the direction of antipartisan warfare was the subject of a written agreement between the German War Office, the High Command,

and the SS. As a result of that agreement an Einsatz group was attached to each Army Group Headquarters and directed the work of the Einsatzkommandos allotted to the group in co-ordination and agreement with the military authorities. If confirmation of the Army's support, knowledge and approval were needed, one has only got to look at the report of the Einsatz Group A on its activities during the first 3 months of the campaign against the Soviet Union.

I quote:

"Our task was to establish hurriedly personal contact with the commanding generals of the armies and with the commanding general of the army of the rear area. It must be stressed from the beginning that co-operation with the Armed Forces was generally good, in some cases... it was very close, almost cordial" (Document Number L-180).

And again, speaking of the difficulty of dealing with the partisans in a particular area:

"After the failure of purely military activities such as the placing of sentries and combing through the newly occupied territories with whole divisions, even the Armed Forces had to look out for new methods. The Einsatzgruppe made it its foremost task to search for new methods. Soon therefore, the Armed Forces adopted the experiences of the Security Police and their methods of combating the partisans."

One of these methods is described in the same report in these words:

"After a village had been surrounded, all the inhabitants were forcibly shepherded into the main square. The persons suspected on account of confidential information and the other villagers were interrogated and thus it was possible in most cases to find the people who helped the partisans. Those were either shot offhand, or, if further interrogations promised useful information, taken to headquarters. After the interrogation they were shot.

"In order to get a deterring effect the houses of those who had helped the partisans were burnt down on several occasions."

And then, after stating that villagers were always threatened with the burning of the whole village, the report adds: "The tactics to put terror against terror succeeded marvelously" (Document Number D-735).

The Einsatzkommandos were, as Ohlendorf stated, under Kaltenbrunner's command, but the orders under which they were acting cannot have exceeded in severity those which were issued

by Keitel. The Führer order issued by him on 16 December 1942 on the combating of partisans states—I quote:

"If the fight against the partisans in the East as well as in the Balkans is not waged with the most brutal means, we will shortly reach the point when the available forces are insufficient to master this scourge.

"It is therefore not only justifiable but it is the duty of the troops to use all means without restriction—even against women and children—so long as it insures success" (Document Number UK-66).

Three days later he and Ribbentrop were informing their Italian opposite numbers at breakfast that: "The Führer had declared that the Serbian conspirators were to be eliminated and that no gentle methods must be used in doing this."

Keitel interjected, "Every village in which partisans might be found must be burnt down" (Document Number D-735).

Two months later Ribbentrop was urging the Italian Ambassador in Berlin to greater brutality in dealing with the partisans in Croatia. I quote: "The gangs would have to be exterminated, including men, women, and children, as their further existence imperiled the lives of German and Italian men, women, and children" (Document Number D-741).

Göring appears to have assisted Himmler in recruiting the necessary personnel for antipartisan work and he is recorded by a cabinet councillor on the 24th of September 1942 as stating that he was looking for daring fellows for employment in the Eastern special purpose units and that he was considering convicts and poachers for the purpose. His idea was:

"In the regions assigned for their operations these bands, whose first task should be to destroy the commands of the partisan groups, could murder, burn, and ravish. In Germany they would once again come under strict supervision" (Document Number 638-PS).

A month later he gave the Duce a description of Germany's methods in combating the partisans in the following terms:

"To begin with, the entire livestock and all foodstuff is taken away from the areas concerned so as to deny partisans all sources of food. Men and women are taken away to labor camps, children to children's camps and the villages burnt down. . . .

"Should attacks occur, then the entire male population of villages would be lined up on one side and the women on the other side. The women would be told that all men would be shot unless they (the women) indicated which of the men did not belong to the village. In order to save their men the

women always pointed out the stranger" (Document Number D-729).

These methods were not confined to the East. They were going on throughout the length and breadth of every occupied territory. Wherever the slightest resistance was offered the German answer was to attempt to stamp it out with the utmost brutality. It would not be difficult to rival the events of Lidice and Oradour-sur-Glane by a hundred other instances.

One of the most brutal expedients, the taking of hostages, was the subject of an order by the German High Command on 16 September 1941. Keitel ordered—I quote:

"a. It should be inferred in every case of resistance to the German occupying forces, no matter what the individual circumstances, that it is of Communist origin.

"b. In order to nip these machinations in the bud the most drastic measures should be taken immediately on the first indication so that the authority of the occupying forces may be maintained and further spreading prevented. In this connection it should be remembered that a human life in the countries involved frequently counts for nothing and a deterrent effect can be attained only by unusual severity. The death penalty for 50 to 100 Communists should generally be regarded in those cases as suitable atonement for one German soldier's life. The way in which sentence is carried out should still further increase the deterrent effect" (Document Number C-148).

We may compare the wording of the Einsatzkommando report:

"In the knowledge that the Russian has been accustomed from old to ruthless measures on the part of the authorities, the most severe measures were applied" (Document Number L-180).

There is no difference in outlook between Keitel and Kaltenbrunner; the German soldier was being ordered to emulate the SS.

A fortnight after issuing that order, Keitel, whose only defense was that he had pressed for 5 to 10 hostages for one German in place of 50 to 100, had had a further idea, and on the 1st of October 1941 he suggested that it is advisable that military commanders should always have at their disposal a number of hostages of different political tendencies, nationalist, democratic-bourgeois, or Communist, adding:

"It is important that among them shall be well-known leading personalities or members of their families whose names are to be made public. Depending on the membership of the culprit, hostages of the corresponding group are to be shot in case of attacks" (Document Number 1590-PS).

The original document bears the ominous note: "Complied with in France and Belgium."

The effect of these orders throughout the German Army is well seen from three instances of the action taken by a local commander.

In Yugoslavia, a month after Keitel's original order a station commander reported that in revenge for the killing of 10 German soldiers and the wounding of another 26, a total of 2,300 people had been shot, 100 for each killed and 50 for each wounded German soldier (Document Number USSR-74).

On the 11th of July 1944 the commander of the district of Covolo in Italy was, in a public poster, threatening to kill 50 men for every member of the German Armed Forces whether military or civilian, who was wounded, and a hundred if a German was killed. In the event of more than one soldier or civilian being killed or wounded, all the men of the district would be shot, the houses set on fire, the women interned, and the cattle confiscated immediately. In June of the same year 560 persons, including 250 men, were reported by Kesselring as having been taken into custody under threat of shooting within 48 hours, some German colonel having been captured by bandits (Document Number D-39).

The men directly implicated in these brutalities are Göring, Ribbentrop, Keitel, Jodl, and Kaltenbrunner, but who can doubt that every man in that dock knew of the orders and of the way in which the German Armed Forces were being taught to murder men, women, and children, and were doing so throughout the length and breadth of Europe? Raeder, who says he disapproved of this sort of policy in Norway, states that he tried to dissuade Hitler, yet he continued to hold his post and to lend his name to the regime under which these things were being done.

I pass on to matters for which he and Dönitz were more immediately responsible. The conduct of the war at sea reveals exactly the same pattern of utter disregard for law and for decency. There can seldom have been an occasion when the minds of two naval commanders have been so clearly read from their documents as those of the Defendants Raeder and Dönitz that can be read in the present case.

As early as the 3d of September 1939 the German Navy, in a memorandum to the Foreign Office, were seeking agreement to a policy of sinking without warning both enemy and neutral merchant ships in disregard of the London Submarine Rules, their own Prize Ordinance and of course the international law. A series of documents during the following 6 weeks reveals constant pressure on the Foreign Office by Raeder to consent to this policy.

On the 16th of October 1939 Raeder produced a memorandum on the intensification of naval warfare against England. In this document, having proclaimed the "utmost ruthlessness" as necessary

and the intention to destroy Britain's fighting spirit within the shortest possible time, Raeder went on to say—I quote:

> "The principal target of naval warfare is the merchant ship, not only the enemy's but in general every merchant ship which sails the seas in order to supply the enemy's war industry both for imports and exports."

It is that document which contains the infamous passage:

> "It is desirable to base all military measures taken on existing international law; however, measures which are considered necessary from a military point of view, provided a decisive success can be expected from them, will have to be carried out even if they are not covered by existing international law. In principle, therefore, any means of war which is effective in breaking enemy resistance should be supported by a legal conception, even if this entails the creation of a new code of naval warfare."

In another memorandum on the 30th of December he went on to urge further intensification, particularly with regard to neutrals—I quote: "... without binding ourselves to any conceptions such as the declaration of barred zones ..."—and he suggested that as they were going to invade neutral states it really did not matter if they went a little far at sea: "... the intensified measures of the war at sea will, in their political effect, only play a small part in the general intensification of the war" (Document Number C-100).

You will have noted that these memoranda on the conduct of the war at sea echo the High Command's view on the future war which had been written 18 months earlier:

> "According to whether the application of normal rules of war will create greater advantages or disadvantages for them, the warring nations will consider themselves as being at war or not being at war with the neutral states" (Document Number L-211).

Was that a mere coincidence? At all events, such was the pattern laid down by Raeder and followed by Dönitz. From the very first the Naval War Staff never had any intention of observing the laws of war at sea.

The defense that the sinking of Allied merchant ships without warning was justified by Allied measures is as untenable as the suggestion that the sinking at sight of neutral merchant ships was preceded by warning which complied with the requirements of international law. You have seen the very vague and general warnings given to the neutrals and the memorandum of the Naval War Staff revealing that these were deliberately given in the most general terms because Raeder knew that the action he intended against neutrals was utterly illegal. I need not remind you of the

document which suggests that orders should be given by word of mouth and a false entry made in the log book, the very practice followed in the case of the *Athenia,* or of the entries in Raeder's own war diary revealing that carefully selected neutrals should be sunk wherever the use of electric torpedoes might enable the Germans to maintain that the ship had really struck a mine. You have confirmation in the bland denials prepared by Raeder to answer the protests of the Norwegian and Greek Governments on the sinking of the *Thomas Walton* and the *Garufalia* and the reluctant admission in the case of the *Deptford,* all three ships sunk in December 1939 by the same U-boat. Nothing reveals more of the cynicism or opportunism with which Raeder and Dönitz treated international law than the contrast between their attitude toward the sinking of a Spanish ship in 1940 and that in September 1942. In 1940 Spain did not matter to Germany; in 1942 she did.

Details with regard to the various successive measures taken in the course of putting into effect the policy of sink at sight do not require recapitulation but there are two features of the conduct of naval warfare by these two defendants which I must emphasize. First, they continued to put out to the world that they were obeying the London Rules and their Prize Ordinance. The reason for that appears in Raeder's memorandum of the 30th of December 1939 where he says—I quote:

> "... a public announcement of intensified measures for the war at sea must be urgently advised against in order not to burden the Navy again in the eyes of history with the odium of unrestricted U-boat warfare" (Document Number C-100).

And that, you see, is the common plan—the common plan—the very argument put forward by Jodl and Dönitz in February 1945, in favor of simply breaking the regulations of the Geneva Convention rather than announcing Germany's renunciation of it to the world. And here, once again, is the doctrine of military expediency; if it will pay Germany to break a particular law she is entirely justified in breaking it, provided always it can be done in such a way as to avoid detection and the condemnation of world opinion.

It must not be thought that in initiating this policy of sink at sight and in disregarding the rules of war at sea Raeder was any more drastic than Dönitz. In his defense Dönitz made a great effort to explain away his order of 17 September 1942. I ask the Tribunal to remember its terms: "No attempt of any kind must be made at rescuing members of ships sunk.... Rescue runs counter to the rudimentary demands of warfare aimed at the destruction of enemy ship and crews" (Document Number D-630).

His diary entry of the same date, which confirms that order, starts—I quote: "The attention of all commanding officers is again

drawn to the fact that all efforts to rescue run counter to the rudimentary demands of warfare . . ."

Well, the defendant denied that this means that crews were to be destroyed or annihilated. But the previous history makes it abundantly clear that this was an invitation to U-boat commanders to destroy the crews of shipwrecked merchantmen, while preserving an argument for Dönitz to make, should—as has indeed happened—occasion arise. That, after all, was the pattern laid down by Hitler when on the 3d of January 1942, he told Oshima that—I quote: ". . . he must give the order that in case foreign seamen could not be taken prisoner . . . U-boats were to surface after torpedoing and shoot up the lifeboats" (Document Number D-423).

The evidence shows constant pressure by Hitler from then on for the issue of this order. It is admitted that he demanded it at a meeting with both Dönitz and Raeder on the 14th of May 1942 and that he raised the question again on the 5th of September 1942. Dönitz himself referred to pressure by Hitler during the *Laconia* incident. You have confirmation that the order issued on the 17th of September was intended to bear the construction put upon it by the Prosecution in the evidence of the witness Heisig and in that of Möhle. Is it conceivable that a senior officer would have been allowed to go on from the 17th of September 1942 until the end of the war briefing the hundreds of U-boats which set out from Kiel that this was an order to annihilate unless that was what the Naval War Staff intended? You have the evidence that Dönitz himself saw every U-boat commander before and after his cruise, his own admissions with regard to the comments made by his staff officers at the time he drafted the order and his general attitude revealed by the order of October 1939, which he admits was a nonrescue order—an utterly indefensible order in itself in the submission of the Prosecution. There is further the coincidence that the very argument which Hitler advanced to Oshima, namely, the importance of preventing the Allies finding the crews for the immense American construction program, was the argument Dönitz himself admits putting forward on the 14th of May, was the argument which Heisig reports hearing, and is the reason given for the subsequent order to give priority in attacking convoys to sinking rescue ships. You have the instances of the *Antonice,* the *Noreen Mary,* and the *Peleus* whilst the man who expressed horror at the idea that he should issue such an order admittedly saw the log book of the U-boat which sank the *Sheaf Mead* with its brutal entry describing the sufferings of those left in the water. Dönitz' own statement was that—I quote: ". . . to issue such a directive could only be justified if a decisive military success could be achieved by it."

Was it not because, as his own document shows, the percentage of ships being sunk outside convoys in September 1942 was so high

that a decisive military success might have been gained that this order was issued, whereas in April 1943, when almost all sinkings were in convoy, it was not necessary to issue a further order in more explicit terms?

The Prosecution firmly and strongly submit that the Defendant Dönitz intended by that order to encourage and to procure as many submarine commanders as possible to destroy the crews of merchant ships but deliberately couched the order in its present language so that he could argue the contrary if circumstances required it. On the evidence of Admiral Wagner that the Naval War Staff approved the order of 17 September 1942 with respect to survivors, Raeder cannot escape responsibility and, indeed, since he was present at the meeting with Hitler in May of that year and received the Führer order of the 5th of September 1942 (Documents Dönitz-16 and 39) to issue instructions to kill survivors, there can be little doubt that he was fully involved in his subordinate's policy.

Although within a few months Allied air power made it impossible for U-boats in most areas to risk surfacing at all after they had discharged their torpedo, and the question became one of less importance, it is interesting to note that when the order against rescue ships was issued on the 7th of October the following year the same phrase "destruction of ships' crews" (Document Number D-663) recurred.

Despite the denial of Kapitänleutnant Eck, (Document Number Dönitz-36) there can really be no real doubt that, briefed by Möhle, he did what his superior officers intended him to do. Why should it be supposed that a man, who a month later received Hitler's Commando Order without protest, should shrink from ordering the destruction of seamen on rafts or clinging to wreckage, when Hitler had explained its military necessity. Eck, who obeyed the orders of Raeder and Dönitz, has paid the supreme penalty. Are they to escape with less?

I turn now to yet another war crime—the use of slave labor. Its importance for the German war machine had been appreciated by these defendants long before the outbreak of war. Hitler had mentioned it in *Mein Kampf* and emphasized it at the meeting in May 1939. A few weeks later in June the Reich Defense Council, Göring, Frick, Funk, and Raeder, and representatives of every other ministry of state were planning to employ 20,000 concentration camp inmates and hundreds of thousands of workers from the Protectorate in the coming war.

Hitler's plan for Poland, revealed to Schirach and Frank, was as follows—I quote:

"The ideal picture is this: A Pole may possess only small holdings in the Government General which will to a certain

extent provide him and his family with food. The money required by him for clothes, ... *et cetera,* he must earn in Germany by work. The Government General must become a center for supplying unskilled labor, particularly agricultural labor. The subsistence of these workmen will be fully guaranteed because they can always be made use of as cheap labor" (Document Number USSR-172).

That policy, of course, was a short-term policy, the real aim being the elimination of the Eastern peoples. Sauckel was appointed plenipotentiary with the task of replacing 2 million German workers who had been called to service with the Wehrmacht, and he himself says that after Hitler had emphasized that it was a war necessity he had no scruples and within a month of his appointment he had sent his first labor mobilization program to Rosenberg.

"Should we not succeed in obtaining the necessary labor on a voluntary basis we must immediately institute conscription of forced labor ... a gigantic number of new foreign workers ... men and women ... an indisputable necessity" (Document Number 016-PS).

This program he was to carry out "with every possible energy and a ruthless commitment of all our resources ..." (Document Number 017-PS).

It is unnecessary to refer to the voluminous evidence of the execution of this policy for the recruitment of workers. It is sufficient to quote Sauckel again addressing the Central Planning Board in March of 1944:

"... to train male and female agents ... who shanghaied ... men for labor in Germany. ... Out of 5 million foreign workers who arrived in Germany not even 200,000 came voluntarily" (Document Number R-124).

The methods employed in their forced deportations are hideous in their brutality and must have been known to every one of these defendants. In April of 1941 Himmler was addressing the officers of the SS Leibstandarte Adolf Hitler. I quote:

"Very frequently a member of the Waffen-SS thinks about the deportation of this people here. These thoughts come to me today watching the very difficult work performed by the Security Police and supported by your men who help them a great deal. Exactly the same thing happened in Poland in weather 40 degrees below zero where we had to haul away thousands, tens of thousands, hundreds of thousands ..." (Document Number 1918-PS).

And again:

"Whether 10,000 Russian females fall down from exhaustion while digging an antitank ditch interests me only insofar as

the antitank ditch for Germany is finished... When somebody comes to me and says, 'I cannot dig the antitank ditch with women and children, it is inhuman, for it would kill them', then I have to say: 'You are a murderer of your own blood because if the antitank ditch is not dug, German soldiers will die and they are the sons of German mothers.' We must realize that we have 6-7 million foreigners in Germany... Perhaps it is even 8 million now. We have prisoners in Germany. They are none of them dangerous so long as we take severe measures at the merest trifle" (Document Number 1919-PS).

By August 1943 the need for workers was even greater. Himmler ordered:

"... that all young female prisoners capable of work are to be sent to Germany for work through the agency of Reich Commissioner Sauckel. Children, old women and old men are to be collected and employed in women's and children's camps..." (Document Number 744-PS).

The orders issued to group leaders of the SD, active in the Ukraine, showed the same urgency. I quote:

"The activity of the Labor Office... is to be supported to the greatest extent possible. It will not be possible always to refrain from using force.... When searching villages, or when it has become necessary to burn down a village, the whole population will be put at the disposal of the commissioner by force. As a rule, no more children will be shot.... If we limit our harsh Security Police measures through the above orders for the time being, it is only done for the following reason. The most important thing is the recruitment of workers" (Document Number 3012-PS).

Speer admitted—how could he deny it—the knowledge and approval of the way the workers were enrolled and brought to Germany against their will; there was Kaltenbrunner's letter to his friend Blaschke:

"For... special reasons I have in the meantime given orders to ship several evacuation transports to Vienna; at present four shipments with approximately 12,000 Jews are pending. ... They should reach Vienna within the next few days.... Women unable to work and children of those Jews who are all kept in readiness for special action and therefore one day will be removed again, have to stay in the guarded camp also during the day" (Document Number 3803-PS).

That sinister phrase again—the meaning of which they all knew so well—"special treatment," "special action." Murder remains murder by whatever euphemism murderers may seek to describe it.

The need for labor became so urgent that not only were even Jews spared the gas chambers so long as they were fit for employment but children were seized and put to work.

So much for their deportation to Germany. What was to be their lot on their arrival? As early as March 1941 instructions had been issued to the Kreis Farmers Association on the treatment Polish farm workers were to receive (Document Number EC-68). They were to have no rights to complain. They were forbidden—this religious people—to visit churches; all forms of entertainment, public transport were barred. Their employers were given the right to inflict corporal punishment and were "not to be held accountable in any case by any official agency." And lastly, it was ordered:

> "Farm workers of Polish nationality should if possible be removed from the community of the home; they can be quartered in stables, *et cetera.* No remorse whatever should restrict such action."

The treatment of those employed in industry was even worse. You will remember the affidavit of the Polish doctor in Essen who did his best to attend to the Russian prisoners of war.

> "... men were thrown together in such a catastrophic manner that no medical treatment was possible ... it seemed to me ... unworthy of human beings that people should find themselves in such a position.... Every day at least 10 men were brought to me whose bodies were covered with bruises because of the continual beatings with rubber tubes, steel switches, or sticks. The people were often writhing with agony and it was impossible for me to give them even a little medical aid.... It was difficult for me to watch how such suffering people could be directed to do heavy work ... Dead people often lay for 2 or 3 days on the palliasses until their bodies stank so badly that fellow prisoners took them outside and buried them somewhere ... I was a witness during a conversation with some Russian women, who told me personally that they were employed in Krupp's factory and that they were beaten daily in a bestial manner.... Beating was the order of the day" (Document Number D-313).

By the end of 1943 more than 5 million men, women, and children were working in the Reich and if we include prisoners of war the total of those working in Germany was at this date just under 7 million (Document Number D-524). To these must be added the hundreds of thousands brought in during 1944—millions of men and women taken from their homes by the most brutal methods, transported in all weather in cattle-trucks from every quarter of Europe, employed on farms and in factories throughout the Reich, frequently under abominable conditions; children taken from their parents, many to remain for their lives orphans, not knowing their

identity or true names, taken away before they were old enough to remember the place from which they came. What is the measure of this crime? No man in that dock can dispute his knowledge or his complicity. The minutes of the Central Planning Board must have been read in every department of the State. You have seen the mass of evidence connecting the military leaders and every other branch of the Government with this colossal program of slavery. None of these men can be acquitted of this crime. None of them can have been ignorant of the scale and brutality with which it was perpetrated.

I pass now to a connected matter, but one even more terrible—the general manner in which the defendants conducted the belligerent occupation of the territories which they had overrun.

The evidence that these territories were the scene of murder, slavery, terrorism, and spoliation on a scale without precedent in history, in breach of the most elementary rules as to belligerent occupation, has not really been seriously challenged. These crimes were in no sense sporadic or isolated depending on the sadism of a Koch here or cruelty by a Frank there. They were part and parcel of a deliberate and systematic plan of which their action in regard to slave labor was just a symptom. In order to establish the "1,000-year Reich," they set out to accomplish the extermination or permanent weakening of the racial and national groups of Europe or of those sections, such as the intelligentsia, on which the survival of those groups must largely depend.

The origin of this terrible attempt upon the existence of free and ancient nations goes back to the whole Nazi doctrine of total war which rejected war as being merely against states and their armies, as international law provides. Nazi total war was also a war against civilian populations, against whole peoples. Hitler told Keitel at the end of the Polish campaign: "Prudence and severity must be the maxims in this racial struggle in order to spare us from going to battle on account of Poland again" (Document Number 864-PS).

The aims of genocide were formulated by Hitler in the following words in his conversation with Hermann Rauschning:

> "The French complained after the war that there were 20 million Germans too many. We accept the criticism. We favor the planned control of population movements. But our friends will have to excuse us if we subtract the 20 millions elsewhere. After all these centuries of whining about the protection of the poor and lowly, it is about time for the decision to protect the strong against the inferior. It will be one of the chief tasks of German statesmanship for all time to prevent, by every means in our power, the increase of the Slav races. Natural instincts bid all living beings not merely to conquer

their enemies, but also destroy them. In former days, it was the victor's prerogative to destroy entire tribes, entire peoples. By doing this gradually and without bloodshed, we demonstrate our humanity" (Document Number USSR-378).

Himmler's vision was similar. I quote:

"For us the end of this war will mean the open road to the East, the creation of the Germanic Reich in this way or that . . . the fetching home of 30 million human beings of our blood, so that still during our lifetime we shall be a people of 120 million Germanic souls. That means that we shall then be able to tackle the peace, during which we shall be willing for the first 20 years to rebuild and spread out our villages and towns, and that we shall push the borders of our German race 500 kilometers farther out to the East" (Document Number L-70).

Their aims went beyond mere Germanization, the imposition of the German cultural pattern upon other peoples. Hitler was resolved to expel non-Germans from the soil he required but that they owned, and colonize it by Germans. This is plainly stated in *Mein Kampf*. I quote:

"The Polish policy in the sense of a Germanization of the East, demanded by so many, was rooted unfortunately almost always in the same wrong conclusion. Here too it was believed that one could bring about a Germanization of the Polish element by a purely linguisitic integration into the German nationality. Here too the result would have been an unfortunate one; people of an alien race, expressing their alien thought in the German language, compromising the height and dignity of our own nationality by their own inferiority" (Document Number USA-256, Pages 429-430).

Himmler put it even more clearly:

"It is not our task to germanize the East in the old sense, that is to teach the people there the German language and the German law, but to see to it that only people of purely Germanic blood live in the East" (Document Number 2915-PS).

The defendants were careful to conceal their true aims from their victims. In January 1940 a captured report reads:

"In order to relieve the living space of Poles in the Government General as well as in the liberated East, one should remove cheap labor temporarily by hundreds of thousands, employ them for a few years in the old Reich, and thereby hamper their native biological propagation at the same time,"

and it concludes:

"Strictest care is to be taken that secret circulars, memoranda, and official correspondence which contain instructions

detrimental to the Poles are kept rigidly under lock and key so that they will not some day fill the White Books printed in Paris or the U.S.A." (Document Number 661-PS).

Again, the day before the appointment of Rosenberg as Minister for the East, Hitler told him in the presence of Keitel, Göring, and Bormann, I quote:

"We ought to act here in exactly the same way as we did in the case of Norway, Denmark, Holland, and Belgium. In these cases, too, we did not publish our aims and it is only sensible to continue in the same way. Therefore we shall emphasize again that we were forced to occupy, administer, or secure a certain area. It was in the interests of the inhabitants that we provided order, food, communications, *et cetera.* Hence our measures. Nobody shall be able to recognize that it initiates a final settlement. This should not prevent our taking all necessity measures—shooting, deportation, *et cetera,* and we shall take them" (Document Number L-221).

Having given these words of caution to his confederates, you will remember how Hitler went on to elaborate his plans for the destruction of the Soviet peoples. The Crimea, he said, must be evacuated of all foreigners and settled by Germans only.

"We now have to face the task of cutting up the giant cake according to our needs in order to be able: First, to dominate it, secondly, to administer it, thirdly, to exploit it."

The pattern was exemplified in the infamous plan of Neurath and Frank for Bohemia and Moravia—the same Neurath whose counsel the day before yesterday asked you to respect the holiness of the individual" (Document Number 3859-PS).

The pattern, I say, was exemplified in their plan for Bohemia and Moravia. No more terrible document has been put in evidence in this Trial nor one which more completely exposes the falsity of the slogan "Lebensraum," which constituted the excuse for the rape of Czechoslovakia. That plan required the elimination of the intelligentsia, the bearers of Czechoslovakian history and tradition, and, since the long-term solution of evacuating all Czechs completely from the country and replacing them by Germans could not be effected immediately because of shortage of Germans, a short term solution of germanizing the remainder of the population. This was to be done by rendering their language a dialect, by abolition of higher education, by instituting a stringent marriage policy after various racial examinations. You will remember Frank's summary. I quote:

"Apart from the continuance of the propaganda for Germanization and the granting of advantages as an inducement, severest police methods with exile and special treatment for

all saboteurs. Principle: 'Pastry and Whip' " (Document Number 3859-PS).

You will remember too the plan for Poland discussed in Hitler's train on the 12th of September 1939 by Ribbentrop, Keitel, and Jodl, as described in the evidence of the witness Lahousen, and the discussion between Hitler, Schirach, and Frank 3 weeks later after dinner in the Führer's apartment.

"... there should be one master only for the Poles—the German; two masters side by side cannot and must not exist and therefore all representatives of Polish intelligentsia are to be exterminated. This sounds cruel but such is the law of life" (Document Number USSR-172).

Such were the plans for the Soviet Union, for Poland and for Czechoslovakia. Genocide was not restricted to extermination of the Jewish people or of the gypsies. It was applied in different forms to Yugoslavia, to the non-German inhabitants of Alsace-Lorraine, to the people of the Low Countries and of Norway. The technique varied from nation to nation, from people to people. The long-term aim was the same in all cases.

The methods followed a similar pattern: First a deliberate program of murder, of outright annihilation. This was the method applied to the Polish intelligentsia, to gypsies, and to Jews. The killing of millions, even by the gas chambers and the mass shootings employed, was no easy matter. The defendants and their confederates also used methods of protracted annihilation, the favorite being to work their victims to death, hence Himmler's bond with the Minister of Justice in September 1942 under which antisocial elements were handed over to the SS "to be worked to death" (Document Number 654-PS). On the 14th of the same month Goebbels was recommending this method in terms:

"With regard to the destruction of asocial life Dr. Goebbels has the opinion that the following groups should be exterminated: Jews and gypsies unconditionally, Poles who have to serve about 3 or 4 years of penal servitude, and Czechs and Germans who are sentenced to death or penal servitude for life or to security custody. The idea of exterminating them by labor is the best" (Document Number 682-PS).

Another favorite technique of extermination was by starvation. Rosenberg, the great architect of this policy of national murder, told his collaborators in June 1941:

"The object of feeding the German people stands this year without a doubt at the top of the list of Germany's claims on the East, and there the southern territories and the northern Caucasus will have to serve as a balance for the feeding of the German people. We see absolutely no reason for any obligation on our part to feed also the Russian people with the

products of that surplus territory. We know that this is a harsh necessity bare of any feelings. A very extensive evacuation will be necessary without any doubt and it is sure that the future will hold very hard years in store for the Russians" (Document Number 1058-PS).

The method applied in Alsace was deportation. A captured report reads:

"The first expulsion action was carried out in Alsace in the period from July to December 1940 in the course of which 105,000 persons were either expelled or prevented from returning. They were in the main Jews, gypsies and other foreign racial elements, criminals, antisocial, and incurably insane persons, and in addition Frenchmen, and Francophiles. The patois-speaking population was combed out by these series of deportations in the same way as the other Alsatians" (Document Number R-114).

The report goes on to state that new deportations are being prepared and after reciting the categories affected, sums up the measures being taken:

"... the problem of race has been given first consideration and this in such a manner that persons of racial value are to be deported to Germany proper and racially inferior persons to France."

The Nazis also used various biological devices, as they have been called, to achieve genocide. They deliberately decreased the birthrate in the occupied countries by sterilization, castration, and abortion, by separating husband from wife and men from women and obstructing marriage. I quote:

"We are obliged to depopulate"—said Hitler to Rauschning—"as part of our mission of preserving the German population. We shall have to develop a technique of depopulation. If you ask me what I mean by depopulation, I mean the removal of entire racial units. And that is what I intend to carry out—that, roughly, is my task. Nature is cruel, therefore, we, too, must be cruel. If I can send the flower of the German nation into the hell of war without the smallest pity for the spilling of precious German blood, then surely I have the right to remove millions of an inferior race that breeds like vermin" (Document Number USSR-378).

You have seen Neurath's use of this biological device in his plan for Czechoslovakia. Listen to Bormann's directives for the Eastern territory summarized by one of Rosenberg's subordinates. I quote:

"The Slavs are to work for us. Insofar as we do not need them, they may die. Therefore, compulsory vaccination and German health services are superfluous. The fertility of the

Slavs is undesirable. They may use contraceptives or practice abortion; the more the better. Education is dangerous. It is enough if they can count up to a hundred. At best an education which produces useful stooges for us is admissible" (Document Number R-36).

Himmler speaks with the same voice:

"We must be honest, decent, loyal, and comradely to members of our own blood, to nobody else. What happens to the Russians, the Czechs, does not interest me in the slightest. What the nations can offer in the way of good blood of our type we will take, if necessary by kidnapping their children and raising them here with us. Whether nations live in prosperity or starve to death interests me only insofar as we need them as slaves for our Kultur; otherwise it is of no interest to me" (Document Number 1919-PS).

The converse to methods designed to decrease the birthrate in occupied territories was the artificial increase in the birthrate of Germans. In February 1941 the Defendant Seyss-Inquart organized a system of giving away Dutch girls to German soldiers. In violation of Article 43 of the Hague Convention, he ordered changes in the law of the Netherlands so that he could assume parental and guardianship rights over girls, substituting himself for their parents if the parents refused their daughters permission to marry German soldiers.

This policy of Seyss-Inquart's was later confirmed by the supreme authorities of the German Reich, Hitler, Keitel, and Lammers, on July 28th, 1942. A decree was issued granting subsidies and employment privileges for Dutch and Norwegian women bearing children to members of the German Armed Forces. And they have the impudence to talk now about the holiness of the individual. This was simply a plan to transfer, as if it were some mercantile commodity, the biological resources of Holland and Norway to the use of the German people. Himmler was one of the advocates of stealing children; as he said on the 14th of October 1943:

"Obviously in such a mixture of peoples there will always be some racially very good types. In these cases I think that it is our duty to take their children with us to remove them from their environment, if necessary by robbing or stealing them.... Either we win over any good blood that we can use for ourselves and give it a place in our people or ... we destroy this blood" (Document Number L-70).

In the case of Russia, Keitel, who had learned the phrase "shrewdness and severity" as the maxim for the exploitation of Poland, paved the way by his orders of the 13th of May and 23d of

July 1941 (Documents Number C-50 and C-52). I quote from the latter, drafted on his own admission by Jodl:

"In view of the vast size of the occupied areas in the East the forces available for establishing security in these areas will be sufficient only if all resistance is punished not by legal prosecution of the guilty but by the spreading of such terror by the occupying power as is appropriate to eradicate every inclination to resist among the population. The competent commanders must find the means of keeping order... not by demanding more security forces but by applying suitable Draconic methods..." (Document Number C-52).

The immediate needs of the war machine no doubt saved the western territories from similar destruction, but the Tribunal have an ample evidence of the plunder of France, the Low Countries, and the other territories which these men exploited to the utmost possible extent. In view of the nature of their murderous policy, it is not surprising that the men charged by the defendants to carry it out were brutes. In Rosenberg's domain, for instance, there was Koch, who was recommended by Rosenberg for the post of Commissar in Moscow because of the very fact of his "absolute ruthlessness." It was Koch who caused the slaughter of several hundred innocent human beings in the Zuman wood area so that he could have a private hunting reserve. Another of Rosenberg's agents was Kube, who wrote:

"...we have liquidated in the last 10 weeks about 55,000 Jews in White Ruthenia. In the territory Minsk-Land Jewry has been eliminated without endangering the manpower demands. In the pre-eminently Polish territory Lida, 16,000 Jews, in Slonim 8,000 Jews and so forth have been liquidated" (Document Number 3428-PS).

As in Poland the orders given to Frank were as follows:

"Ruthless exploitation... reduction of entire Polish economy to absolute minimum necessary for bare existence... The Poles shall be the slaves of the greater German world empire" (Document Number EC-344).

And we know how he carried it out. In January 1940 he records:

"Cheap labor must be removed from the Government General by hundreds of thousands. This will hamper the native biological propagation..." (Document Number 2233-PS).

In May he speaks of:

"...taking advantage of the focusing of world interest on the Western Front by liquidations of thousands of the Poles, first the leading representatives of the Polish intelligentsia."

And in December:

"Poles must feel they have only one duty; to work and to behave. We must carry out all measures ruthlessly; rely on me . . ."

We who try to understand the problems of eastern Europe must try to understand this; the details of the martyrdom of Poland simply cannot be described; a third of the people murdered; millions left impoverished, sick, maimed, and helpless; liberation was just in time to save this ancient people from the terrible fulfillment of the program which these men had plotted.

Would that be a convenient moment to . . .

THE PRESIDENT: Certainly.

[A recess was taken.]

SIR HARTLEY SHAWCROSS: There is one group to which the method of annihilation was applied on a scale so immense that it is my duty to refer separately to the evidence. I mean the extermination of the Jews. If there were no other crime against these men, this one alone, in which all of them were implicated, would suffice. History holds no parallel to these horrors.

As soon as the prospect of a second World War became a certainty, Streicher, who had preached this infamous doctrine as far back as 1925, began in earnest to advocate annihilation (Document Number M-13). As he, on his own admission, had been instrumental in effecting the Nuremberg Decrees by years of propaganda in favor of racial laws, so now, in January 1939, anticipating the war which was to come, he began, in articles published in the *Stürmer* with "the full support of the highest Reich authority," to demand with all vehemence the physical extinction of the Jewish race. Unless words have completely lost their meaning, what do these words mean but murder:

"They must be exterminated root and branch" (Document Number D-811).

"Then will the criminal Jewish race be forever eradicated" (Document Number D-813).

"Then will they slay the Jews in masses" (Document Number D-817).

"Prepare a grave from which there can be no resurrection" (Document Number M-148).

Almost immediately after the war had started the organized extermination of the Jewish race began: Hoess has told you:

"The final solution of the Jewish question means the complete extermination of all Jews in Europe. I was ordered to establish extermination facilities in Auschwitz in June 1941.

At that time there were already in the Government General three other extermination camps: Belzek, Treblinka, and Wolzek."

Already the Jews in Germany and Poland had been concentrated in the ghettos of the Government General. Over dinner in the Führer's apartment in October 1940, Frank had explained and I quote:

"The activities in the Government General could be termed very successful. The Jews in Warsaw and other cities were now locked up in ghettos, Kraków very shortly would be cleared of them.

"Reichsleiter Von Schirach . . . remarked that he still had more than 50,000 Jews in Vienna whom Dr. Frank would have to take over from him" (Document Number USSR-172).

When the order actually came, therefore, the preparatory measures, so far as they affected Poland and Germany, had already been taken. Of the destruction of the ghettos and the slaughter of their populations General Stroop's report on the Warsaw action is eloquent evidence (Document Number 1061-PS). But the fate of the Jews in Warsaw was only typical of the fate of the Jews in every other ghetto in Poland.

When they were not slaughtered in the ghettos themselves they were transported to the gas chambers. Hoess, Commandant of Auschwitz, described the procedure:

"I visited Treblinka to find out how they carried out their exterminations. The camp commandant at Treblinka told me that he had liquidated 80,000 in the course of one half-year. He was primarily concerned with the liquidation of the Jews from the Warsaw ghetto."

Hoess describes the improvements that he made at Auschwitz. He introduced the new gas, Cyclone B which—I quote:

". . . took from 3 to 15 minutes to kill the people in the death chamber, depending upon climatic conditions. We knew when the people were dead because their screaming stopped. . . . Another improvement we made over Treblinka was that we built our gas chambers to accommodate 2,000 people at a time, whereas at Treblinka their 10 gas chambers accommodated only 200 people each."

And he describes the selection of the victims from the daily transports that arrived:

"Those who were fit for work were sent into the camp. Others were sent immediately to the extermination plants. Children of tender years were invariably exterminated since, by reason of their youth, they were unable to work. Still another improvement we made over Treblinka was that at

Treblinka the victims almost always knew they were to be exterminated and at Auschwitz we endeavored to fool the victims into thinking that they were going through a delousing process. Of course, frequently they realized our true intentions. Very frequently the women would hide their children under the clothes but of course when we found them we would send the children in to be exterminated. We were required to carry out these exterminations in secrecy, but of course the foul and nauseating stench from the continuous burning of bodies permeated the entire area and all of the people living in the surrounding communities knew that exterminations were going on at Auschwitz."

So also must they have known in the districts surrounding Belzek, Treblinka, Wolzek, Mauthausen, Sachsenhausen, Flossenbürg, Neuengamme, Gusen, Natzweiler, Lublin, Buchenwald, and Dachau.

I do not repeat these things in order to make the blood run cold. It is right that a few of these typical matters should be extracted from the great mass of the evidence which is accumulated here so that one may see this thing in its true perspective and appreciate the cumulative effect of what has been proved.

Whilst the German armies surged into Russia and the Baltic States, the Einsatzkommandos followed in their wake. Their dreadful work had been planned and prepared in advance. In the file describing the operations of the Task Force A there is a map of the Baltic countries showing the number of Jews that were living in each state who were to be hounded out and killed (Document Number L-180). Another map shows the results achieved after those 2 or 3 months' work—a total of 135,567 Jews destroyed. In another report on their operations during October 1941 it is proudly stated that they continued "on the march with the advancing troops into the sectors which have been assigned to them" (Document Number 2273-PS).

These actions were not only the work of the SS and Himmler. They were carried out in co-operation with the army commanders with the full knowledge of Keitel and Jodl and, indeed, because every soldier fighting in the East must have known about them, with the knowledge also of every member of the Government and of the commanders of its Armed Forces.

"Our task"—so states the report of the Task Force A—"was hurriedly to establish personal contact with the commanding generals of the armies and with the commanding general of the rear army. It may be stressed from the beginning that co-operation with the Armed Forces was generally good. In

some cases, for instance, with Panzer Group 4 under Generaloberst Hoeppner, it was very close, almost cordial" (Document Number L-180).

The German generals were "almost cordial" as they weltered in the blood of hundreds of thousands of helpless, innocent men, women, and children. Perhaps they enjoyed this work—in the same way as the members of the Einsatzkommandos themselves apparently enjoyed it.

"It should be mentioned"—states the report—"that the assigned leaders of the Waffen-SS and of the Order Police, as far as they are reserves, have declared their wish to stay on with the Security Police and the SD" (Document Number L-180).

Again and again, in the reports of the Einsatzkommandos, progress, co-operation with the Army authorities is emphasized. After describing how thousands of Lithuanian Jews had been made harmless, during a particular pogrom in June, it is stated: "These self-cleansing actions went smoothly because the Army authorities who showed full understanding for this procedure were informed of them."

Nor was it only cordiality and understanding that the Army authorities showed. In some cases they themselves took the initiative. After describing the murder of inmates of lunatic asylums that had fallen into their hands, the Einsatzkommando report continues:

"Sometimes authorities of the Armed Forces asked us to clear out in a similar way other institutions which were wanted as billets. However, as the interests of the Security Police did not require any intervention, it was left to the authorities of the Armed Forces to take the necessary action with their own forces."

And again:

"The advance of the forces of Special Task Group A which were intended to be used for Leningrad was effected in agreement with and on the express wish of Panzer Group 4."

How can operations of this kind, extending for months and years over vast territories, carried out with the co-operation of the Armed Forces as they advanced and in the rear areas that they administered, have remained unknown to the leaders in Germany? Even their own commissioners in the occupied territories protested. In October 1941 the Commissioner for White Ruthenia was forwarding to the Reich Commissioner for Eastern Territories at Riga a report on the operations in his district. Some idea of the horror of those operations can be seen from that report. I quote:

"Regardless of the fact that the Jewish people, among whom were also tradesmen, were mistreated in a terribly barbarous

way in the face of the White Ruthenian people, the White Ruthenians themselves were also worked over with rubber clubs and rifle butts . . . the whole picture was generally more than ghastly . . . . I was not present at the shooting before the town. Therefore I cannot make a statement on its brutality. But it should suffice if I point out that persons shot have worked themselves out of their graves some time after they had been covered" (Document Number 1104-PS).

But such protests of this kind were of no avail; the slaughter continued with unabated ghastliness.

In February 1942, in Heydrich's activity and situation report on the Einsatzkommandos in the U.S.S.R. of which a copy was addressed to Kaltenbrunner personally, it was stated:

"We are aiming at cleansing the Eastern countries completely of Jews. . . . Estonia has already been cleared of Jews.

"In Latvia the number of Jews in Riga, of which there were 29,500, has now been reduced to 2,500" (Document Number 3876-PS).

By June 1943 the Commissioner for White Ruthenia was again protesting. After referring to 4,500 enemy dead, he says:

"The political effect of this large-scale operation upon the peaceful population is simply dreadful in view of the many shootings of women and children."

The Reich Commissar for Eastern Territories, forwarding that protest to Rosenberg, the Reich Minister for Occupied Eastern Territories in Berlin, added:

"The fact that Jews receive special treatment requires no further discussions. However, it appears hardly believable that this is done in the way described in the report of the Commissioner General . . . . What is Katyn against this? Imagine only that these occurrences would become known to the other side and exploited by them. Most likely such propaganda would have no effect if only because people who read and heard about it simply would not be ready to believe it" (Document Number R-135).

How true that comment is. Are we ready even now to believe it? Describing the difficulty of distinguishing between friend and foe, he says:

"Nevertheless, it should be possible to avoid atrocities and to bury those who have been liquidated. To lock men, women, and children into barns and set fire to them does not appear to be a suitable method of combating bands, even if it is desired to exterminate the population. This method is not worthy of the German cause and hurts our reputation most severely."

Of these Jews murdered in White Ruthenia, over 11,000 were slaughtered in the district of Libau, and 7,000 of them had been killed in the naval port itself (Documents Number L-180, D-841).

How can any of these defendants plead ignorance of these things? When Himmler was speaking of these actions quite openly amongst his SS generals and all the officers of his SS divisions in April 1943, he told them:

> "Anti-Semitism is exactly the same as delousing. Getting rid of lice is not a question of ideology: it is a matter of cleanliness. In just the same way, anti-Semitism for us has not been a question of ideology but a matter of cleanliness which now will soon have been dealt with. We shall soon be deloused. We have only 20,000 lice left, and then the matter is finished off within the whole of Germany" (Document Number 1919-PS).

And in October of that year:

> "Most of you must know what it means when 100 corpses are lying, side by side, or 500, or 1,000."

Meanwhile, the mass murder of Jews at Auschwitz and the other extermination centers was becoming a State industry with by-products. Bales of hair, some of it, as you will remember, still plaited as it has been shorn off the girls' heads, tons of clothing, toys, spectacles, and other articles went back to the Reich to stuff the chairs and clothe the people of the Nazi State. The gold from their victims' teeth, 72 transports full, went to fill the coffers of Funk's Reichsbank. On occasion, even the bodies of their victims were used to make good the wartime shortage of soap (Document Number USSR-272).

The victims came from all over Europe. Jews from Austria, Czechoslovakia, Hungary, Romania, Holland, Soviet Russia, France, Belgium, Poland, and Greece were being herded together to be deported to the extermination centers or to be slaughtered on the spot.

In April 1943, Hitler and Ribbentrop were pressing the Regent Horthy to take action against the Jews in Hungary. Horthy asked:

> "What should he do with the Jews now that he had deprived them of almost all possibilities of livelihood? He could not kill them off. The Reich Foreign Minister declared that the Jews must be either exterminated or taken to concentration camps. There was no other possibility" (Document Number D-736).

Hitler explained:

> "In Poland the state of affairs had been fundamentally cleared up. If the Jews there did not want to work, they were shot. If they could not work they had to succumb.

They had to be treated like tuberculosis bacilli. This was not cruel if one remembered that even innocent creatures of nature, such as hares and deer, have to be killed so that no harm is caused by them."

In September 1942, Ribbentrop's State Secretary, Luther, was writing:

"The Reich Foreign Minister has instructed me today by telephone to hasten as much as possible the evacuation of the Jews from different countries.... After a short lecture on the evacuation now in progress in Slovakia, Croatia, Romania, and the occupied territories, the Reich Foreign Minister has ordered that we are to approach the Bulgarian, Hungarian, and Danish Governments with the goal of getting evacuation started in those countries" (Document Number 3688-PS).

By the end of 1944, 400,000 Jews from Hungary alone had been executed in Auschwitz. In the German Embassy in Bucharest the files contained a memorandum:

"... 110,000 Jews are being evacuated from Bukovina and Bessarabia into two forests in the area of the river Bug.... The purpose of the action is the liquidation of these Jews." (Document Number 3319-PS)

Day by day, over years, women were holding their children in their arms and pointing to the sky while they waited to take their place in blood-soaked, communal graves. Twelve million men, women, and children have died thus, murdered in cold blood; millions upon millions more today mourn their fathers and mothers, their husbands, their wives, and their children. What right has any man to mercy who has played a part—however indirectly—in such a crime?

Let Gräbe speak again of Dubno (Document Number 2992-PS):

"On 5 October 1943 when I visited the building office at Dubno my foreman... told me that in the vicinity of the site, Jews from Dubno had been shot in three large pits, each about 30 meters long and 3 meters deep. About 1,500 persons had been killed daily. All of the 5,000 Jews who had still been living in Dubno before the action were to be liquidated. As the shooting had taken place in his presence, he was still much upset.

"Thereupon I drove to the site, accompanied by my foreman, and saw near it great mounds of earth, about 30 meters long and 2 meters high. Several trucks stood in front of the mounds. Armed Ukrainian militia drove the people off the trucks under the supervision of an SS man. The militia men acted as guards on the trucks and drove them to and from the pit. All

these people had the regulation yellow patches on the front and back of their clothes and thus could be recognized as Jews.

"My foreman and I went directly to the pits. Nobody bothered us. Now I heard rifle shots in quick succession from behind one of the earth mounds. The people who had got off the trucks—men, women, and children of all ages—had to undress upon the orders of an SS man, who carried a riding or dog whip. They had to put down their clothes in fixed places, sorted according to shoes, top clothing, and underclothing. I saw a heap of shoes of about 800 to 1,000 pairs, great piles of under linen and clothing. Without screaming or weeping these people undressed, stood around in family groups, kissed each other, said farewells, and waited for a sign from another SS man, who stood near the pit, also with a whip in his hand. During the 15 minutes that I stood near I heard no complaint or plea for mercy. I watched a family of about eight persons, a man and a woman both about 50 with their children of about 1, 8, and 10, and two grown-up daughters of about 20 to 24. An old woman with snow-white hair was holding the one-year-old child in her arms and singing to it and tickling it. The child was cooing with delight. The couple were looking on with tears in their eyes. The father was holding the hand of a boy about 10 years old and speaking to him softly; the boy was fighting his tears. The father pointed to the sky, stroked his head, and seemed to explain something to him. At that moment the SS man at the pit shouted something to his comrade. The latter counted off about 20 persons and instructed them to go behind the earth mound. Among them was the family which I have mentioned. I well remember a girl, slim and with black hair, who as she passed close to me, pointed to herself and said, '23'. I walked around the mound and found myself confronted by a tremendous grave. People were closely wedged together and lying on top of each other so that only their heads were visible. Nearly all had blood running over their shoulders from their heads. Some of the people shot were still moving. Some were lifting their arms and turning their heads to show that they were still alive. The pit was already two-thirds full. I estimated that it already contained about 1,000 people. I looked for the man who did the shooting. He was an SS man, who sat at the edge of the narrow end of the pit, his feet dangling into the pit. He had a tommy gun on his knees and was smoking a cigaret. The people, completely naked, went down some steps which were cut in the clay wall of the pit and clambered over the heads of the people lying there, to the place to which the SS man directed them. They lay down in front of the dead or injured

people; some caressed those who were still alive and spoke to them in a low voice. Then I heard a series of shots. I looked into the pit and saw that the bodies were twitching or the heads lying motionless on top of the bodies which lay before them. Blood was running away from their necks. I was surprised that I was not ordered away but I saw that there were two or three guards in uniform nearby. The next batch was approaching already. They went down into the pit, lined themselves up against the previous victims and were shot. When I walked back round the mound I noticed another truck load of people which had just arrived. This time it included sick and infirm persons. An old, very thin woman with terribly thin legs was undressed by others who were already naked, while two people held her up. The woman appeared to be paralyzed. The naked people carried the woman around the mound. I left with my foreman and drove in my car back to Dubno.

"On the morning of the next day, when I again visited the site, I saw about 30 naked people lying near the pit—about 30 to 50 meters away from it. Some of them were still alive; they looked straight in front of them with a fixed stare and seemed to notice neither the chilliness of the morning nor the workers of my firm who stood around. A girl of about 20 spoke to me and asked me to give her clothes and help her escape. At that moment we heard a fast car approach and I noticed that it was an SS detail. I moved away to my site. Ten minutes later we heard shots from the vicinity of the pit. The Jews still alive had been ordered to throw the corpses into the pit, then they had themselves to lie down in this to be shot in the neck."

That no man in that dock can have remained ignorant of the horrors perpetrated to support the Nazi war machine and the policy of genocide becomes the more clear when you consider the evidence with regard to another great crime little heard of during the course of this Trial but which, as clearly as any other, illustrates the wickedness of these men and of their regime—the murder of some 275,000 persons by so-called mercy killing. To what base uses that beautiful word was put!

Sometime in the summer of 1940 Hitler secretly ordered the murder of ill and aged people in Germany who were no longer of productive value for the German war machine. Frick, more than any other man in Germany, was responsible for what took place as a result of that decree. Of his knowledge and of the knowledge of a great many people in Germany there is abundant evidence. In July 1940 Bishop Wurm was writing to Frick (Document Number M-152):

"For some months past, insane, feeble-minded, and epileptic patients of state and private medical establishments have been transferred to another institution on the orders of the Reich Defense Council. Their relatives, even when the patient was kept at their cost, are not informed of the transfer until after it has taken place. Mostly they are informed a few weeks after that the patient concerned has died of an illness and that owing to the danger of infection the body has had to be cremated. At a superficial estimate several hundred patients of an institution in Wurttemberg alone must have met their death in this way . . .

"Owing to numerous inquiries from town and country and from the most variegated circles, I consider it my duty to point out to the Reich Government that this fact is causing a particular stir in our small province. . . . Transports of sick people who are unloaded at the small railway station of Marbach on the Lahn, the buses with opaque windows which bring sick persons from more distant railway stations or directly from the institutions, the smoke which rises from the crematorium and which can be noticed even from a considerable distance . . . all this gives rise to speculation the more so as no one is allowed into the castle. . . . Everybody is convinced that the causes of death which are published officially are selected at random. When, to crown everything, regret is expressed in the obituary notice that all endeavors to preserve the patient's life were in vain, this is felt as a mockery. But it is above all the mysteriousness which gives rise to the thought that something is happening which is contrary to justice and ethics and cannot therefore be openly defended by the Government like other necessary and stringent war measures. . . . This point is continually stressed by simple people as well as in the numerous oral and written statements which come to us . . ."

Frick's ears were deaf to pleas for justice and ethics such as that. A year later, in August 1941, the Bishop of Limburg wrote to the Reich Ministries of the Interior, of Justice, and Church Affairs (Document Number 615-PS):

"About 8 kilometers from Limburg in the little town of Hadamar, on a hill overlooking the town there is an institution which had formerly served various purposes and of late has been used as a nursing home. This institution was renovated and furnished as a place in which, by consensus of opinion, the above-mentioned euthanasia had been systematically practiced for months, approximately since February 1941. The fact has become known beyond the administrative district of Wiesbaden. . . .

"Several times a week buses arrive in Hadamar with a considerable number of such victims. School children of the vicinity know this vehicle and say: 'There comes the murder box again.' After the arrival of these vehicles citizens of Hadamar watch the smoke rise out of the chimney and are tortured with the constant thought of the misery of the victims, especially when repulsive odors annoy them....

"The effect of the principles at work here are that children call each other names and say: 'You are crazy, you will be sent to the baking ovens in Hadamar.' Those who do not want to marry or find no opportunity say: 'Marry, never! Bring children into the world so that they can be put into the pressure steamer!' You hear old folks say: 'Do not send me to a state hospital. After the feeble minded have been finished off the next useless eaters whose turn it will be are the old people...'

"Officials of the Secret State Police, it is said, are trying to suppress discussion of the Hadamar occurrences by means of severe threats. In the interests of public peace this may be well intended, but the knowledge and the conviction and the indignation of the population cannot be changed by it. The conviction will be increased with the bitter realization that discussion is prohibited with threats, but that the actions themselves are not prosecuted under penal law. *Facta loquuntur.*"

If the common people of Germany knew and were complaining of these relatively insignificant murders, when the Ministries of Justice, of the Interior, and of Church Affairs were receiving protests from the Bishop of two districts far removed from each other, on what was common knowledge in their dioceses, how much greater were the security problems of the Einsatzkommandos in the East. In May 1942 an SS leader reporting to Berlin on a tour of inspection of the progress of the extermination drive wrote of the gas vans:

"By having small shutters introduced, one on each side of the smaller van and two on each side of the bigger van, such as one sees often on peasants' houses in the country, I have had the vehicles in Group D disguised to look like vans for living in. The cars were so well known that not only the authorities but also the civilian population allude to it as the 'Death Car' as soon as one of these vehicles appears. In my opinion even with camouflage it cannot be kept secret for any length of time" (Document Number 501-PS).

Can these defendants have remained in ignorance? What peculiar dispensation of Providence was there that protected them from knowledge of these matters, matters which were their concern?

This slaughter of the aged and imbeciles—the subject of gossip throughout Germany and of articles in the world press—must have been known to every one of these men. How much more then must they have known of the concentration camps which, during those years, covered like a rash the whole of Germany and the occupied territories. If they could only acquiesce in the mercy killings, with what favor they must have regarded the extermination of the Jews.

In 1939 there had been six main concentration camps—Dachau, Sachsenhausen, Buchenwald, Mauthausen, Flossenbürg, and Ravensbruck. Frick's budget for the Ministry of the Interior for that year includes a sum of RM 21,155,000 for armed SS and concentration camps—no less than a fifth of the total budget (Document Number 2873-PS). By April 1942 there had been added to those six camps nine more and more were to follow afterward.

But these were only the core of the system. Like planets, each of them had its attendant satellites. Ziereis has given you some idea of the extent of this system (Document Number D-626). He describes the subsidiary camps that were based on Mauthausen alone: 33 of them he mentioned by name, giving the numbers of prisoners at each—a total of over 102,000. Besides those 33, there were another 45, also all under the authority of the Mauthausen commandant.

You have seen the map of Europe showing the location of as many of these main subsidiary concentration camps as are known. Over 300 of them are marked on that map (Document Number F-321).

By August 1944 there was a total of 1,136,000 prisoners, which included 90,000 from Hungary, 60,000 from the police prison and ghetto of Litzmannstadt, 15,000 Poles from the Government General, 10,000 convicts from Eastern Territories, 17,000 former Polish officers, 400,000 Poles from Warsaw and between 15,000-20,000 continually arriving from France (Document Number 1166-PS).

These were only the physically fit and therefore permanent residents—permanent, at least until through physical exhaustion their productive capacity was no longer worth the nuisance that their continued existence meant. Then they took their place in the daily detail for the gas chambers.

Day after day the chimneys of the crematoria belched their nauseating stench over the countryside. When the Bishop of Limburg could write to Frick of the repulsive odors from the comparatively insignificant ovens at Hadamar, can we doubt the evidence of Hoess that I mentioned?

> "The foul and nauseating stench from the continuous burning of bodies permeated the entire area and all the people living in the surrounding communities knew that exterminations were going on at Auschwitz."

Day after day trainloads of victims traveled over the railroads of the whole Reich on their way to the extermination centers or their own slavery. Many arrived dying and even dead through the appalling conditions under which they journeyed. An official at the railway station at Essen has described the arrival of workers from Poland, Galicia, and the Ukraine:

"They came in goods wagons in which potatoes, building materials, and also cattle had been transported. The trucks were jammed full with people. My personal view was that it was inhuman to transport people in such a manner.

"The people were squashed closely together and they had hardly any room for free movement.... It was enraging to every decent German to see how the people were beaten and kicked and generally maltreated in a brutal manner. In the very beginning, as the first transports arrived, we could see how inhumanly these people were treated. Every wagon was so overfull that it was incredible that such a number could be jammed into one wagon.... The clothing of prisoners of war and civilian workers... was catastrophic. It was ragged and ripped and the footwear was the same. In many cases they had to go to work with rags round their feet. Even in the worst weather and bitterest cold I have never seen that any of the wagons were heated" (Document Number D-321).

Those men were not destined for concentration camps—that was certain. How much worse the conditions of these who were. Great columns, too, trekked on foot along the highways of the Reich. They walked until they could walk no more; then they died by the side of the road. Ziereis, commandant of Mauthausen, in his dying confession said:

"In the presence of Baldur von Schirach and others I received the following order from... Himmler...:

"All Jews of localities in the Southeast, working on the so-called fortification commands... are to be sent on foot to Mauthausen.

"In consequence of this order of Himmler's 60,000 Jews were to come to Mauthausen, but in fact only a small fraction of this number arrived. As an example I mention that out of one convoy of 4,500 Jews which started out from somewhere in the country, only 180 arrived... women and children had been without shoes and were in rags and were very verminous. In that convoy were complete families of which due to weakness an immense number had been shot on the way" (Document Number D-626).

Now, whatever may have been hidden from view behind the stockades of the concentration camps, these things were open for

all to see. Every one of these defendants must have seen them and the thousands of concentration camp prisoners working in the fields and factories adorned in their striped pajamas—a uniform that was as familiar as any other in Germany.

How possibly could any one of these defendants, had he even a spark of human pity, have continued to take active part in support of a system that was responsible for such suffering? But they had no pity—and by their ideology and teaching they had deprived the German people of pity.

Ziereis describes the frightful end that Kaltenbrunner contemplated for the concentration camps and their inmates when the advancing Allied Armies brought with them the danger of capturing those camps and of disclosing the guilt of the Nazi Government.

> "... Prisoners were to be led into the tunnels of the factory Bergkristall... the only entrance was to be blown up by the use of explosive and the death of the prisoners was to be effected in this manner" (Document Number 3870-PS).

Even Ziereis, murderer of Mauthausen's 65,000 dead, shied, and refused that order.

That evidence is corroborated beyond question by the written order issued by the commandant of the Sipo and SD in the Government General, which has been put in as evidence:

> "Should the situation at the front necessitate it, early preparations are to be made for the total clearance of the prisons. Should the situation develop suddenly, in such a way that it is impossible to evacuate the prisoners the present inmates are to be liquidated and their bodies disposed of as far as possible (burning, blowing up the building, *et cetera).* If necessary, Jews still employed in the armament industry or on other work are to be dealt with in the same way. The liberation of prisoners or Jews by the enemy, be it the Western enemies or the Red Army, must be avoided under all circumstances. Nor may they fall into their hands alive" (Document Number L-53).

And Kaltenbrunner himself saw to it that these orders should be carried out. With this evidence before us, there can be only one meaning to that teleprint message which was found among his papers on his arrest:

> "Please inform the Reichsführer SS and report to the Führer that all arrangements as to Jews, political and concentration camp internees in the Protectorate have been taken care of by me personally today" (Document Number 2519-PS).

The proposition which you are asked to accept is that a man who was either a minister or a leading executive in a state which, within

the space of 6 years, transported in horrible conditions some 7 million men, women, and children for labor, exterminated 275,000 of its own aged and mentally infirm and annihilated in the gas chambers or by shooting what must at the lowest computation be 12,000,000 people, remained ignorant of or irresponsible for these crimes. You are asked to accept that the horrors of the transports, of the conditions of this slave labor, deployed as it was in labor camps throughout the country, the smell of the burning bodies, all of which were known to the world, were not known to these 21 men by whose orders such things were done. When they spoke or wrote in support of this horrible policy of genocide you are asked to accept that their utterances were made in ignorance of the facts, as part of their general duty to support the policy of their government, or finally, should be regarded merely as tactical—that is to say, that only by talking or writing in such a way could they divert Hitler from cruelty or aggression. It is for you to decide.

Göring, Hess, Ribbentrop, Keitel, Kaltenbrunner, Rosenberg, Frank, Frick, Streicher, Funk, Schacht, Dönitz, Raeder, Schirach, Sauckel, Jodl, Von Papen, Seyss-Inquart, Speer, Von Neurath, Fritzsche, Bormann—these are the guilty men.

Let me make brief comments upon each one of them, but in particular upon those whose close complicity in the most sordid crimes of all, the bestial murders, has possibly been less manifest.

Göring's responsibility in all these matters is scarcely to be denied. Behind his spurious air of bonhomie, he was as great an architect as any in this satanic system. Who, apart from Hitler, had more knowledge of what went on, or greater influence to affect its course? The conduct of government in the Nazi State, the gradual build-up of the organization for war, the calculated aggression, the atrocities—these things do not occur spontaneously or without the closest co-operation between the holders of the various offices of state. Men do not advance into foreign territory, pull the trigger, drop their bombs, build the gas chambers, collect the victims, unless they are organized and ordered to do it. Crimes on the national and systematic scale which occurred here must involve anyone who forms a part of the necessary chain, since without that participation, plans for aggression here, mass murder there, would become quite impossible. The Führer Principle by which the Nazis placed their bodies and their very souls at the disposal of their leader was the creation of the Nazi Party, and of these men. When I addressed you at the opening of this Trial, I remarked that there comes a time when a man must choose between his conscience and his leader. No one who chooses, as these men did, to abdicate their consciences in favor of this monster of their own creation can complain now if they are held responsible for complicity in what their monster did.

And least of all, Hess. The role Hess played in the Nazi Party is well established. But not content with creating the monster, he aided it in every aspect of its monstrous work.

I mention only one instance. You will recall, in connection with the extermination of the Eastern peoples, his direction to Party officials to support recruitment for the Waffen-SS. He said:

> "... it consists of National Socialists who are more suitable than other armed units for the specific tasks to be solved in the Occupied Eastern Territories, owing to their intensive National Socialist training in regard to questions of race and nationality" (Document Number 3245-PS).

Ribbentrop's part, also, is clear. No one in history has so debauched diplomacy. No one has been guilty of meaner treachery. But he, like the rest of them, is just a common murderer. Ribbentrop it was who, since 1940, had been directing the minions in his Embassy and legations throughout Europe to accelerate the execution of such "political measures," that is, measures of racial extermination (Document Number EC-265). It was not Himmler, but the Reich Foreign Minister who proudly reported to the Duce in February 1943 that, "All Jews had been transported from Germany and from the territories occupied by her to reservations in the East" (Document Number D-734).

His bald recommendations to Horthy two months later and the record of the conference called by Steengracht, his permanent Under Secretary of State, betray the meaning of these ghastly euphemisms (Documents D-736, 3319-PS).

No one was more insistent on merciless action in the occupied territories than Ribbentrop. You will remember his advice to the Italians on how to deal with strikes: "... in such a case only merciless action is any good ... in the occupied territories where it has proved that we would not get anywhere with soft measures or the endeavor to reach an agreement" (Document Number D-740).

Advice which he proceeded to reinforce by referring with pride to the successes of "brutal measures" in Norway, "brutal action" in Greece, and in France and Poland the success of "Draconian measures."

Were Keitel and Jodl less involved in murder than their confederates? They cannot deny knowledge or responsibility for the operations of the Einsatzkommandos with whom their own commanders were working in close and cordial co-operation. The attitude of the High Command to the whole question is typified by Jodl's remark about the evacuation of Danish Jews: "I know nothing of this. If a political measure is to be carried out by the military commander in Denmark, the OKW must be notified by the Foreign Office" (Document Number D-547).

You cannot disguise murder by calling it a political measure.

Kaltenbrunner, as chief of the RSHA, must be guilty. The reports of the Einsatzkommandos were sent to him monthly (Document Number 3876-PS). You will remember the words of Gisevius, a witness for the Defense:

> "We asked ourselves whether it was possible that an even worse man could possibly be found after such a monster as Heydrich.... Kaltenbrunner came... and things got worse every day.... We had the experience that perhaps the impulsive actions of a murderer like Heydrich were not as bad as the cold legal logic of a lawyer who was handling such a dangerous instrument as the Gestapo."

You will remember his description of those horrible luncheon parties at which Kaltenbrunner discussed every detail of the gas chambers and of the technique of mass murder.

Rosenberg's guilt as the philosopher and theorist who made the ground fertile for the seeds of Nazi policy is not in doubt, and it is beyond belief that he, as Reich Minister for Eastern Occupied Territories, did not know of and support the destruction of the ghettos and the operations of the Einsatzkommandos. In October 1941, when the operations of those Kommandos were at their height, one of Rosenberg's ministerial departmental chiefs was writing to the Reich Commissioner for the East in Riga informing him that the Reich Security Main Office had complained that he had forbidden the executions of the Jews in Libau and asking for a report upon the matter. On 15 November, the report comes back addressed to the Reich Minister for Occupied Eastern Territories:

> "I have forbidden the wild execution of Jews in Libau because they were not justifiable in the manner in which they were carried out. I should like to be informed whether your inquiry of 31 October is to be regarded as a directive to liquidate all Jews in the East? Shall this take place without regard to age and sex and economic interests...? ... of course, the cleansing of the East of Jews is a necessary task; its solution, however, must be harmonized with the necessities of war production" (Document Number 3663-PS).

Frank—if it is not sufficient to convict him that he was responsible for the administration of the Government General and for one of the bloodiest and most brutal chapters in Nazi history—has himself stated: "One cannot kill all lice and all Jews in one year" (Document Number 2233-C-PS).

It is no coincidence that that was exactly Hitler's language. And again:

> "As far as the Jews are concerned, I want to tell you quite frankly that they must be done away with in one way or

another.... Gentlemen, I must ask you to rid yourselves of all feeling of pity. We must annihilate the Jews wherever we find them and whenever it is possible in order to maintain the structure of the Reich as a whole.... We cannot shoot or poison these 3,500,000 Jews, but we shall nevertheless be able to take measures which will lead to their annihilation in some way" (Document Number 2233-D-PS).

Can Frick, as Minister of Interior, have been unaware of the policy to exterminate the Jews? In 1941 one of his subordinates, Heydrich, was writing to another—the Minister of Justice: "... it may safely be assumed that in the future there will be no more Jews in the annexed Eastern Territories" (Document Number R-96).

Can he, as Reich Protector for Bohemia and Moravia, deny responsibility for the deportations of thousands of Jews from his territory to the gas chambers of Auschwitz, only a few miles across the frontier?

Of Streicher, one need say nothing. Here is a man more responsible, perhaps, than any, for the most frightful crime the world has ever known. For 25 years the extermination of the Jews had been his terrible ambition. For 25 years he had educated the German people in the philosophy of hate, of brutality, of murder. He had incited and prepared them to support the Nazi policy, to accept and participate in the brutal persecution and slaughter of millions of his fellow men. Without him these things could not have been. It is long since he forfeited all right to live.

The fact that the Defendants Schacht and Funk dealt chiefly with economics ought not blind the Tribunal to their important part in the general plan. Schacht says that he had clean hands in this matter. It is for you to say. Schacht played his part in bringing Hitler to power. He says he thought that Hitler was "a man with whom one could co-operate," and assured Hitler that he could always count on him "as your reliable assistant" (Document Number EC-457). He helped to consolidate the Nazi position and he was the main figure in collecting election funds from the industrialists.

It then became his task to provide the economic plan and machinery necessary to launch and maintain aggression. He knew the policy about the Jews, he knew the methods Hitler was using to build up his power, he knew the ultimate aim was aggression. But he continued to play his part. Messersmith has summed up his work:

"... yet by Schacht's resourcefulness, his complete financial ruthlessness and his absolute cynicism, Schacht was able to maintain and to establish the situation for the Nazis. Unquestionably, without this complete lending of his capacities to the Nazi Government and all of its ambitions, it would have

been impossible for Hitler and the Nazis to develop an armed force sufficient to permit Germany to launch an aggressive war" (Document Number EC-451).

The fact that that was in Schacht's mind was shown at a very early date most clearly in a secret report issued by his Ministry of Economics on 30 September 1934 (Document Number EC-128). I have already referred to his deputy's report showing the amazing detail in which plans and preparations for the management of German economy in time of war had been worked out before Schacht resigned in 1937 (Document Number EC-258).

It is not surprising that on Schacht's sixtieth birthday the then German Minister of War, Von Blomberg, said to him: "Without your help, my dear Schacht, none of this armament could have taken place."

In the witness box Schacht says that as early as the second half of 1934 and the first half of 1935 he found he was "wrong in thinking" that Hitler would bring the "revolutionary forces" of Nazism into the regular atmosphere and he discovered that Hitler did nothing to stop the excesses of individual Party members or Party groups. He was pursuing a "policy of terror."

That accords very closely with Schacht's statement to the American Ambassador in September 1934: "... the Hitler Party is absolutely committed to war and the people too are ready and willing. Only a few government officials are aware of the danger and are opposed" (Document Number EC-461).

Schacht's further suggestions that his purpose in the Government was to be critical and was to act as a brake are, as we submit, impossible to reconcile with his own actions. He need not have become Minister of Economics according to his own account, but he did so nonetheless. In May 1935, the month in which he undertook his task as General Plenipotentiary for War Economy, "to put all economic forces in the service of carrying on war and to secure the life of the German people economically," he wrote to Hitler:

"... all expenditures which are not urgently needed in other matters must stop and the entire, in itself small, financial power of Germany must be concentrated toward the one goal —the financing of the armament" (Document Number 1168-PS).

In May 1936 he told a secret meeting of Nazi ministers that his program of financing armaments had meant "the commitment of the last reserve from the beginning" (Document Number 1301-PS). He said he would continue to work since he stood "with unswerving loyalty to the Führer because he fully recognizes the basic idea of National Socialism."

In 1937, when Hitler bestowed the Golden Party Badge upon him, Schacht appealed to all his colleagues: "... further to devote

with all their hearts their entire strength to the Führer and the Reich. The German future lies in the hands of our Führer" (Document Number EC-500).

The mercy killings; the persecution of the Jews. These things must have been known at that time. Were his hands so clean?

In the light of these quotations it is not unexpected to find Ambassador Dodd, whom Schacht counted among his friends, recalling in his diary on 21 December 1937:

> "Much as he dislikes Hitler's dictatorship, he (Schacht), as most other eminent Germans, wishes annexation—without war if possible, with war, if the United States will keep hands off" (Document Number 2832-PS).

These quotations, in our submission, make it clear that Schacht knew well that Hitler's aim was war very much earlier than he himself admits. He does admit, however, that he knew that the plot to discredit General Von Fritsch meant war. Despite that knowledge, on 9 March 1938, he accepted the appointment as Reichsbank president for an additional 4 years. He joyously took part in the acquisition of the former Austrian National Bank on 21 March 1938 and on 7 June 1939 wrote to Hitler:

> "From the beginning the Reichsbank has been aware of the fact that a successful foreign policy could be attained only by the reconstruction of the German Armed Forces. It therefore assumed to a very great extent the responsibility to finance the rearmament in spite of the inherent dangers to the currency. The justification thereof was the necessity—which pushed all other considerations into the background—to carry through the armament at once, out of nothing and furthermore under camouflage in the beginning, which made a foreign policy commanding respect possible" (Document Number EC-369).

These words, and others like them, are merely putting into fine phrases Schacht's knowledge that, if the proposed victims resisted, Hitler was prepared and would be able to plunge into war conditions to achieve his aims. Schacht's intellect and international position only increased the cynical immorality of his crimes.

Moreover Schacht must face these facts. The Tribunal has seen the evidence of the film which showed his sycophantic trotting beside Hitler and swarming over him in 1940. Long before 1943 he must have known of the treatment of the Jews and the reign of terror in occupied countries. Yet until 1943 Schacht remained a Minister without Portfolio and at all events lent his name and weight to this regime of horror. Should anyone be left to boast that he did this with impunity?

Funk carried on Schacht's work. He had already rendered invaluable service to the conspirators by his organization of the Ministry of Propaganda. From 1938 on he was Minister of Economics, president of the Reichsbank and chief Plenipotentiary for Economics, mobilizing economy for aggressive war, well knowing the Nazi plans for aggression. We find him in every field; attending Göring's conference on 12 November 1938, the meeting of the Reich Defense Council in June 1939, advising on decrees to be issued against the Jews at the former and the employment of concentration camp and slave labor at the latter. The final proof of the welcome with which he viewed aggression is found in his letter to Hitler on the 25th of August 1939, the day before the invasion of Poland had been said to begin; he said:

> "How happy and how grateful we must be to you to be favored to experience these colossal and world-moving times, and that we can contribute to the tremendous events of those days.
>
> ". . . Generalfeldmarschall Göring informed me last night that you—my Führer—have approved in principle the measures prepared by me for financing a war, for setting up the wage and price system and for carrying out the plan for an emergency contribution . . . .
>
> "With the proposals worked out by me regarding a ruthless restriction of any unessential consumption and any public expenditure and project not necessary for war, we will be able to meet all financial and economic demands without any serious reverberations" (Document Number 699-PS).

His part during the war needs no further mention than reference to the minutes of the Central Planning Board and to his arrangement with Himmler for the exploitation of the SS loot which, as he knew, came in truckloads from Auschwitz and the other concentration camps to the vaults of the Reichsbank. The Tribunal will also remember the document which shows that his Ministry of Economics received enormous quantities of civilian clothing from these unhappy victims (Document Number 1166-PS).

Was Dönitz ignorant, when he addressed to a Navy of some 600,000 men, a speech on the "spreading poison of Jewry" (Document Number 2878-PS)? Dönitz, who thought fit to circulate to the Naval War Staff Hitler's directive for dealing with the general strike at Copenhagen—"terror should be met by terror"—and asked for 12,000 concentration camp workers for the shipyards, recommending collective reprisals for Scandinavian workers in view of the efficacy of similar methods in France (Documents C-171, C-195).

Are Raeder's hands unstained with the blood of murder? As early as 1933, to use his own words: ". . . Hitler had made the clear political request to build up . . . by 1 April 1938 armed forces which

he could put in the balance as an instrument of political power" (Document Number C-135).

When, therefore, he received successive orders to fight if war resulted from Hitler's foreign policy, he knew very well that war was a certain risk if that policy went awry. Again and again he had this warning, first when Germany left the Disarmament Conference, again at the time of the negotiations for the Naval Agreement in 1935, at the time of the Rhineland, and later when he attended the famous Hossbach conference. He has tried to persuade this Tribunal that he regarded Hitler's speeches at these meetings as mere talk, yet we know that they gave Neurath a heart attack. His old service comrades, Von Blomberg and Von Fritsch, who were unwise enough to object at the conference which sealed the fate of Austria and Czechoslovakia, were dealt with in a manner which, in his own words, shook his confidence not only in Göring, but in Hitler as well.

Can Raeder have been ignorant of the murder of thousands of Jews at Libau in the Baltic? You will remember the evidence that many of them were killed in the naval port and the facts reported by his naval officers at the local headquarters to Kiel (Documents D-841, L-180). We now know from the report of the Kommando which dealt with the Jews of Libau that at the end of January 1942 they had accounted for 11,860 in that district alone. Raeder, on Heroes Day 1939, spoke of the clear and inspiring summons to fight international Jewry (Document Number D-653). Do you really believe, when he was always helping individual Jews, he had never heard of the horrors of concentration camps or the murder of millions? Yet he still went on.

Von Schirach. What need one say of him? That it were better that a millstone had been placed round his neck . . .? It was this wretched man who perverted millions of innocent German children so that they might grow up and become what they did become—the blind instruments of that policy of murder and domination which these men carried out.

The infamous "Heu Aktion" by which between 40,000 and 50,000 Soviet children were kidnapped into slavery was a product of his work (Document Number 031-PS). You will remember the weekly SS reports on the extermination of the Jews found in his office (Document Number 345-PS).

What is the crime of Sauckel whose Gau contained the infamous camp of Buchenwald? Sauckel may now seek to put a gloss on his order to shanghai Frenchmen, to deny that he advocated the hanging of a prefect or a mayor to crush opposition, to say that references to ruthless action referred to interdepartmental disputes and that reformatory labor camps were purely educational institutions. You who have seen the documents which attest the horrors

perpetrated in what we are now told was the product of an emergency—the urgent need for workers to feed the Nazi war machine, you who have heard and read of the conditions in which 7 million men, women, and children torn from their homes were dragged into slavery at his orders can need no further proof of his guilt.

Papen and, if mercy can survive his record in Czechoslovakia, Neurath, are in like case with Raeder. Like him they professed old family and professional integrity, facts which carry with them a great responsibility from which men like Ribbentrop and Kaltenbrunner are free.

Within 18 months of putting Hitler in power Papen knew that Hitler's Government meant oppression of opponents, ill-treatment of the Jews, and persecution of the churches including his own. His recent political friends had been sent to concentration camps or killed, including men like Von Schleicher, and Von Bredow. He had himself been arrested, two members of his staff killed and another compelled to witness killing. None of these things were hidden from Von Neurath, yet he remained in office.

In 1934 Papen was writing sycophantic letters to Hitler and shortly afterward we find him in Austria working for a man he knows to be a murderer, undermining a regime for which he professed outward friendship. Even after the Anschluss he was still working for a regime which he knew used murder as an instrument of policy and after losing yet another secretary by murder he was ready to accept a post in Turkey. The Concordat with his own Church which he had himself negotiated is treated as "a scrap of paper" to use his own words, and Catholics from archbishops to simple believers were outraged. He has said: "Hitler was the greatest crook that ever lived." The case for the Prosecution in a sentence is that, knowing this only too well, Von Papen gave Hitler his support and co-operation because his greed for power and office made it "better to reign in hell than to serve in heaven."

Defense Counsel have sought to portray Papen as an advocate of peace. If he preferred to attain the objects of the conspiracy by the methods of assassination, bullying, and blackmail rather than open war, the reason may be that provided by him in his own evidence, namely that he feared that: "If a world war were to break out, Germany's situation would be hopeless."

As to Seyss-Inquart, you will remember Göring's instructions to him on the 26th of March 1938, to institute anti-Semitic measures in Austria, followed by the progress report on 12 November by one of his officials (Documents 3460-PS, 1816-PS). As far as concerns the Jews in the Netherlands, he admits that he knew they were being deported, but says he was powerless to stop it as it was ordered from Berlin. He has further said that he knew they went to Auschwitz but he says he sent there to inquire about them, was

told they were well off, and arranged for them to send mail from Auschwitz to Holland. It is likely that Seyss-Inquart who admits knowledge of large-scale crimes against the Jews in the Netherlands, for example "a drive to force the Jews to be sterilized," who admits that many and grave excesses occurred in the Netherlands concentration camps and indeed that in wartime he "considered that almost inevitable," who pleads that in comparison with camps elsewhere "it was perhaps not quite so bad in the Netherlands,"—is it possible that he was really deceived as he says into thinking the people in Auschwitz were "comparatively well off"?

One comes next to the Defendants Speer and Fritzsche who have appeared in this Trial as experts. Speer has admitted that his responsibility for conscription of labor helped to bring up the total number of workers under him to 14 million. He stated that when he took over office in February 1942 all the perpetrations or violations of international law of which he could be accused had already been realized. Nevertheless he went on to say:

> "the workers were... brought into Germany against their will. I had no objection to their being brought to Germany against their will. On the contrary during the first period until autumn of 1942 I certainly used all my energy, that as many workers as possible should be brought to Germany."

Further, workers were placed at his disposal by Sauckel and he was responsible for their allocation priorities.

He acknowledged the receipt of 1 million Soviet laborers in August 1942 (Document Number R-124). On 4 January 1944 he demanded 1,300,000 workers for the coming year. Speer produced no defense of this conscription of labor but he did assert that from 1943 he had supported the retention of French workers in France, which is a mere matter of mitigation (Document Number 1202-PS). The moderation of Speer's manner ought not to hide the fact that this policy, which he cheerfully adopted and applied, was one that meant the most appalling misery and suffering for millions of Soviet and other families.

It displays once again the complete disregard for the fate of other people which runs like a sordid thread through the evidence in this Trial, and no moral awakening regarding the interest of the German people—I repeat "the German people"—at the end of the war, can offset the participation in this horrible action.

With regard to the treatment of foreign workers Speer's general point was that the evidence for the Prosecution is simply that of individual bad instances and should not be taken as the general condition. If it were the general condition he would accept responsibility. The Prosecution submit that their evidence, viewed as a whole, is conclusive evidence of general bad conditions.

Neurath, who has told the Tribunal that he joined Hitler's Government to keep it peace-loving and respectable, knew within a few weeks that the Jews were being persecuted, that reputable foreign papers and reputable German papers too for that matter were quoting official figures of 10,000 to 20,000 internees. He knew that the opposition, the Communists, the trade unionists and Social Democrats were being destroyed as political forces. The blood purge followed, yet he went on and seconded Hitler in his breaches of the Treaty of Versailles. We have the evidence of Paul Schmidt that the murder of Dollfuss and the attempted Putsch in Austria seriously disturbed the career personnel of the Foreign Office whilst they regarded the Mutual Assistance Pact between France and the Soviet Union as a further very serious warning as to the potential consequences of German foreign policy.

> "At this time the career officials at least expressed their reservation to the Foreign Minister Neurath. I do not know whether or not Neurath in turn related these expressions of concern to Hitler" (Document Number 3308-PS).

Yet when Raeder was issuing orders about the danger of showing "enthusiasm for war," Von Neurath would have you believe that he had failed to realize its growth. He, as much as Raeder, saw and took part in the events which followed, the secret meetings, the treatment of Von Blomberg and Von Fritsch; he it was at the time of the Anschluss who, though no longer Foreign Minister gave the support of a name, not yet notably tarnished, to Hitler's action by transmitting untruths in denial of the British note and by reassuring the Czechs (Document Number C-194). That reassurance ought never to be forgotten—there can be few things more grimly cynical than Von Neurath who had listened to the Hossbach meeting solemnly telling M. Mastny that Hitler would stand by the Arbitration Treaty with Czechoslovakia. As soon as Hitler had marched into Prague, he it was who became Protector of Bohemia and Moravia. You have heard his admission that he applied all decrees for the treatment of the Jews which had appeared in Germany between 1933 and 1939.

Fritzsche's work was to organize the entire German press so that it became "a permanent instrument of the Propaganda Ministry" (Document Number 3469-PS). Propaganda was the most potent factor in all Nazi strategy. Here in turn that factor made all the press its most potent weapon. The fact that he knew and participated in the use of his organization is shown by his attempt to whitewash the successive propaganda actions which led up to each of the various aggressions mentioned in his affidavit. As he said: "All news checked by me was full of tendency while not invented" (Document Number 3469-PS).

It is incredible that when he was called upon time after time to conduct what was specifically referred to as actions and when each time he saw the practical results he did not realize the dishonesty with which the German policy was being conducted or that the aim of the Nazi Government was aggressive war. His personal ability as a broadcaster caused him to become virtually an official commentator. To quote his own words: "May I add that it is even known to me that in remote front sectors, for instance, or in German colonies abroad my radio speeches were considered, shall we say, the political guide."

He has emphasized that in these comments he had a free hand. Is it to be doubted that this was because he was prepared to broadcast whatever lie Goebbels wanted? He himself says, in dealing with the uses to which his influence was put: "... again and again I was requested to awaken hatred against individuals and against systems."

You have seen a sample in his broadcast on the *Athenia* (Document Number D-912). As early as 1940 he broke far enough away from the restraint which he tried to picture in the witness box to call the Poles "underpeople" and "beasts in human form" (Document Number USSR-492).

On the 18th of December 1941 he referred to the fate of European Jews in the following words:

> "The fate of Jewry in Europe has turned out to be as unpleasant as the Führer predicted it would be in the event of a European war. After the extension of the war instigated by the Jews, this unpleasant fate may also spread to the New World, for you can hardly assume that the nations of the New World will pardon the Jews for the misery of which the Old World did not absolve them" (Document Number 3064-PS).

There were few more dreadful or hate-provoking accusations among the whole miasma of Nazi lies against the Jews, than that of instigating the war which brought such misery to humanity, yet this educated and thoughtful defendant deliberately made it.

It is difficult to imagine any more fulsome or callous adulation of Hitler's aggression than his speech on 9 October 1941 which contained the words:

> "... and we are particularly grateful for these lightning victories because—as the Führer emphasized last Friday—they gave us the possibility of embarking on the organization of Europe and of lifting the treasures of this old continent even now in the middle of a war, without having to keep millions and millions of German soldiers on guard ..." (Document Number 3064-PS).

Perhaps the key to Fritzsche's readiness to conceal the war crimes of his masters is revealed by the basic principle of his propaganda. I quote:

> "But decisive for such a news machine is not the detail but the final fundamental basis on which propaganda is built. Decisive is the belief in the purity of the leaders of the state on which in some way every journalist must rely."

Fritzsche maintained until practically the very end the most excellent relations with Dr. Goebbels. When the Tribunal consider the picture of total extremism and violent anti-Semitism which the other defendants have painted of Goebbels it is difficult to imagine that the worship of his closest collaborator could have been based on innocent ignorance.

The Prosecution submit that it is laughable that such a man should try and persuade you that it was in ignorance of these horrors that he went on exhorting and persuading the German people to tread the path to their doom. Fritzsche shares with Streicher, Rosenberg, and Schirach the responsibility for the utter degradation of the German people so that "they shut the gates of mercy on mankind." It was because of them that such scenes as that in the Jewish cemetery at Schwetz on that Sunday morning in October 1939 occurred, when 200 of Keitel's decent Wehrmacht soldiers watched without a murmer the murder of that lorry-load of women and children. You will remember the story as three of them have told it:

> "On Saturday . . . I heard . . . from conversations among my comrades that a large number of Poles had been shot at the Jewish cemetery of Schwetz in the morning. . . . Talk about the imminent shootings was common among the soldiers stationed in Schwetz. For this reason I went to the Jewish cemetery on Sunday morning together with most of the comrades of my company. We waited there in vain until 9 o'clock.
>
> ". . . when a large truck loaded with women and children entered the cemetery. We saw how a group of one woman and three children . . . were led to a ready-dug grave. The woman had to get down into the grave, holding her youngest child in her arms. The two other children were handed to her by two men of the execution squad. The woman had to lie face downward in the grave; her three children on her left in the same way. After that four men of the squad got down into the grave, raised their rifles and, aiming the muzzles at the woman and the children about one foot from their necks, shot them. In all, about nine or ten groups of women and children were shot in this mass grave in groups of four. When three or four groups had been shot, two more comrades were

ordered to fill in the graves. Two hundred soldiers of the Wehrmacht witnessed these shootings from a distance of about 100 feet.

"Somewhat later a second bus arrived at the cemetery, loaded with men; one woman was among them. These men were separated into groups of four and made to get down into the grave. The corpses there were only barely covered with sand. They had to lie face downward and were executed by the four men of the squad, who shot them in the back of the neck."

You are asked to believe that these 21 ministers and leading officers of state did not know about those matters—were not responsible. It is for you to decide.

Years ago Goethe said of the German people that some day fate would strike them . . .

". . . would strike them because they betrayed themselves and did not want to be what they are. It is sad that they do not know the charm of truth, that mist, smoke, and berserk immoderation are so dear to them, pathetic that they ingenuously submit to any mad scoundrel who appeals to their lowest instincts, who confirms them in their vices and teaches them to conceive nationalism as isolation and brutality."

With what a voice of prophecy he spoke—for these are the mad scoundrels who did those very things.

Some it may be are more guilty than others; some played a more direct and active part than others in these frightful crimes. But when those crimes are such as you have to deal with here—slavery, mass murder and world war, when the consequences of the crimes are the deaths of over 20 million of our fellow men, the devastation of a continent, the spread of untold tragedy and suffering throughout the world, what mitigation is it that some took less part than others, that some were principals and others mere accessories. What matters it if some forfeited their lives only a thousand times whilst others deserved a million deaths?

In one way the fate of these men means little: Their personal power for evil lies forever broken; they have convicted and discredited each other and finally destroyed the legend they created round the figure of their leader. But on their fate great issues must still depend, for the ways of truth and righteousness between the nations of the world, the hope of future international co-operation in the administration of law and justice are in your hands. This Trial must form a milestone in the history of civilization, not only bringing retribution to these guilty men, not only marking that right shall in the end triumph over evil, but also that the ordinary people of the world—and I make no distinction now between friend

or foe—are not determined that the individual must transcend the state. The state and the law are made for men, that through them he may achieve a fuller life, a higher purpose, and a greater dignity. States may be great and powerful. Ultimately the rights of men, made as all men are made in the image of God, are fundamental. When the state, either because as here its leaders have lusted for power and place, or under some specious pretext that the end may justify the means, affronts these things, they may for a time become obscured and submerged. But they are immanent and ultimately they will assert themselves more strongly still, their immanence more manifest. And so, after this ordeal to which mankind has been submitted, mankind itself—struggling now to re-establish in all the countries of the world the common simple things—liberty, love, understanding—comes to this Court and cries: "These are our laws—let them prevail!"

Then shall those other words of Goethe be translated into fact, not only, as we must hope, of the German people but of the whole community of man:

> "... thus ought the German people to behave—giving and receiving from the world, their hearts open to every fruitful source of wonder, great through understanding and love, through mediation and the spirit—thus ought they to be; that is their destiny."

You will remember when you come to give your decision the story of Gräbe, but not in vengeance—in a determination that these things shall not occur again.

"The father"—do you remember?—"pointed to the sky, and seemed to say something to his boy."

THE PRESIDENT: The Tribunal will adjourn.

[The Tribunal adjourned until 29 July 1946 at 1000 hours.]

ONE HUNDRED AND EIGHTY-NINTH DAY

Monday, 29 July 1946

Morning Session

THE PRESIDENT: I call on the Chief Prosecutor for the Provisional Government of the Republic of France, M. Champetier de Ribes.

M. AUGUSTE CHAMPETIER DE RIBES (Chief Prosecutor for the French Republic): Mr. President and Gentlemen of the Tribunal:

On presenting the final address of the French Public Prosecutor, I beg the Tribunal to permit me to express the admiration and the gratitude of my country for the objectivity and calm with which these proceedings have been conducted. In the course of the last 9 months the events of more than 15 years of history have been evoked at this bar. Germany's archives, those of them that the Nazis were unable to burn before their defeat, have yielded up their secrets. We have heard numerous witnesses, whose recollections would have been lost to history but for the present Trial.

All the facts have been presented with strict objectivity, leaving no room for passion nor even for sensibility. The Tribunal have excluded from the proceedings everything that, in their opinion, seemed insufficiently proved, everything that might have appeared to be dictated by a spirit of vengeance. For the chief concern of this Trial is above all that of historical truth.

Thanks to it, the historian of the future, as well as the chronicler of today, will know the truth of the political, diplomatic, and military events of the most tragic period of our history; he will know the crimes of Nazism as well as the irresolution, the weaknesses, the omissions of the peace-loving democracies.

He will know that the work of twenty centuries of a civilization, which believed itself eternal, was almost destroyed by the return of ancient barbarism in a new guise, all the more brutal because more scientific.

He will know that the progress of mechanical science, modern means of propaganda, and the most devilish practices of a police which defied the most elementary rules of humanity, enabled a small minority of criminals within a few years to distort the collective conscience of a great people, and to transform the nation described by Dr. Sauter at the conclusion of his speech in defense of

Von Schirach, as loyal, upright, and full of virtue, into that of Hitler, Himmler, and Goebbels—to mention only those of them who are dead. He will know that the real crime of these men was the conception of the gigantic plan of world domination and the attempt to realize it by every possible means. By every possible means, that is of course, by the breaking of pledges and by unleashing the worst of all wars of aggression, but, above all, by the scientific and systematic extermination of millions of human beings and more especially of certain national or religious groups whose existence hampered the hegemony of the Germanic race. This is a crime so monstrous, so undreamt of in history throughout the Christian era up to the birth of Hitlerism, that the term "genocide" has had to be coined to define it and an accumulation of documents and testimonies has been needed to make it credible.

The perfect collaboration of the four public prosecutors has enabled it to be proved, to the shame of the times we live in, that this crime was possible; and, within the limits of those Counts of the Indictment reserved for herself, France believes that she has done her part in the common task.

While the defendants and their counsels have said a great deal before the Tribunal regarding the protection to which the innocent civilian population is entitled, and have referred to this as to an obvious principle, we have established the fact that the defendants have deliberately violated this principle by treating these civilian populations with the most complete disregard for human life. Is it necessary to recall the terrible words of the Defendant Keitel, "human life is worth less than nothing in the occupied territories."

By reverting to the taking of hostages the defendants revived a tradition which symbolizes the most primitive practices of warfare. They put their signatures to general orders decreeing the capture and execution of thousands of martyrs. In France alone 29,000 hostages were shot. We know that the champions of the resistance movement, whose patriotism is now admired by the defendants, were massacred, tortured, and imprisoned with a view to their slow extermination. We know, too, that, on the pretext of reprisals, in execution of orders or by the cruelty of individuals covered by the complicity of the authorities, civilians were taken at random and executed and that whole villages were burnt down: Oradour-sur-Glane and Maillé in France, Putten in Holland have not risen again from their ruins.

The atrocious orders issued in Marshal Kesselring's operational sector for combating partisan activity by terror are in all our minds. There we saw one officer order the execution of fifty or a hundred men or even of the entire male population of a region as a reprisal for isolated acts directed against the German Army. The execution

of that order was authorized by instructions from the commander of the theater of operations, who was himself acting on more general instructions issued by the Defendant Keitel. This is an example of the perfect collaboration existing between the National Socialist cadre and the State and is an argument, if such be still necessary, for the joint responsibility of the leading personalities of the regime. We know that thousands of men were torn from their homes and forced to make arms to be used against their own country.

The harsh treatment given to soldiers shocked us even more deeply, because Germany, be it the traditional Germany, the Nazi Germany when it was in power, or the Germany which is now presenting the paltry arguments for its defense in the prisoners' dock, has always claimed to uphold the universal rules governing military honor and the respect due to all combatants. In spite of this, we have seen Keitel himself, who championed these ideas to such a degree that he even referred to them again at the conclusion of his testimony in the witness box, urge Wilhelmstrasse and his Codefendant Göring to approve his criminal proposals for the treatment of airmen who fell into their hands.

Documents such as the testimony of Grüner leave no room for doubt that criminal orders to exterminate and lynch airmen were given in the customary way and transmitted to those responsible for their execution. There is no doubt as to the principles which governed the drafting of the order concerning the Commandos, nor as to the execution of this order in the various theaters of operations. The Prosecution have produced a striking collection of evidence on this point.

Our consternation was even greater when it was borne upon us with certainty that cruel decrees had been issued for the execution or imprisonment for the purpose of extermination of men already reduced to a state of helplessness by their internment in prisoner-of-war camps. The sinister affair of Sagan, often evoked in the course of this Trial, is present in our minds. The defendants themselves attempt only to evade personal responsibility without denying the atrocity of the truth of the facts. We have shown how rebellious escaped officers and noncommissioned officers, whose past records and attitude are proof of their moral strength, were exterminated by "Aktion Kugel."

At length, Nazi Germany unveiled her plans for expansion and world domination by organizing the systematic extermination of the peoples whose territories she had occupied. This operation was carried out at first, as we have shown, by the political, economic, and moral destruction of the occupied countries. The methods employed were the brutal or gradual seizure of power, or carefully calculated infiltration of German authority in every sphere, the

preparation of a program of economic pillage and its pitiless execution so as to lead to the exhaustion of the occupied country and to put it at the absolute mercy of the occupying power; in a word the Nazification of the State and the people, as well as the destruction of cultural and moral values.

But this methodical extermination was carried out also in a concrete way by the systematic massacre of the people. Is it necessary to recall the mass extermination of groups considered impossible of assimilation into the National Socialist world, the vast graveyard of the concentration camps, where 15 million people perished, the abominable achievements of the "Einsatzgruppen" (special purposes groups), described with irrefutable precision by General Ohlendorf?

We consider we have also established proof of those pernicious attempts at extermination, which on examination are seen to be one of the most perfect examples of the defendants' policy. I refer to the deliberate undernourishment to which those non-Germans were subjected who for any reason whatsoever came under Nazi authority—whole nations starved by way of reprisal, civilian rations in occupied territories ruthlessly cut to enable the plan for the pillage of the territory to be carried out. The Tribunal will recall Göring's speech to the Gauleiter which has been submitted under Document Number USSR-170:

> "It is absolutely immaterial to me if you say that your people are fainting from hunger. Let them faint, as long as no German starves."

And again, with reference to Holland:

> "It is not our mission to feed a nation which turns from us in spirit. If its people are so weak that they cannot even raise a hand where they are not employed to work for us . . . so much the better."

Famine, bodily misery, and the resulting reduction of the potential of life, are all included, together with the slow exhaustion of political internees and prisoners of war, in the plan for the extermination of populations in order to free German living space.

The same idea is behind the detention in captivity or semi-captivity, as in the case of labor deportees, of healthy young men whose presence at home was of vital importance for the future of their country. All this has been confirmed by the latest census results.

These reveal that all the countries occupied by Germany show a decrease in their population varying from 5 percent to 25 percent, whereas Germany herself is the only country in Europe which

shows an increase. Gentlemen, we have proved all these crimes. After the submission of our documents, the hearing of the witnesses, the projection of films which the defendants themselves could not see without shuddering with horror, nobody in the world can possibly claim that the extermination camps, the executed prisoners, the slaughtered peoples, the mounds of corpses, the human herds maimed in body and soul, the instruments of torture, the gas chambers and crematories—no one can claim that all these crimes existed only in the imagination of anti-German propagandists.

Indeed, none of the defendants have challenged the truth of the facts we have reported. Unable to deny them, they try only to evade their own responsibility by placing the guilt on those of their accomplices who committed suicide.

"We knew nothing of those horrors," they say, or else: "We did everything we could to prevent them but Hitler, who was all-powerful, gave the orders and allowed no one to disobey or even resign from office." What a poor defense! Who is likely to believe that they alone were ignorant of what the whole world knew and that their monitoring stations never reported to them the solemn warnings which were broadcast repeatedly by the heads of the United Nations?

They could not disobey Hitler's order, they could not even resign from office? Indeed! Hitler might have governed their bodies but not their souls. By disobeying him they might perhaps have lost their liberty or even their lives but they would at least have saved their honor. Cowardice has never been an excuse, nor even an extenuating circumstance.

The truth is that having taken part in its elaboration they all knew perfectly well the doctrine of National Socialism and its will to universal domination. They were very well aware of the monstrous crimes to which it inevitably led its adepts and its exponents and that all accepted the responsibility in the same way that all accepted the material and moral advantages which it lavished upon them.

But they thought themselves sure of impunity because they were certain of victory, and that in the face of force triumphant no questions would be asked about the justice of the cause. They persuaded themselves, as they had done after the war of 1914, that no international jurisdiction could ever indict them. They thought that Pascal's pessimistic judgment on human justice in international relationship would always be true: "Justice can be disputed; force is easily recognizable and cannot be disputed. So, as right cannot be made into might, might has been made into right." They are mistaken. Since Pascal's day, the concepts of

morality and justice have slowly but surely taken shape and been incorporated in the international customs of civilized nations.

The Tribunal will doubtless remember that at the conclusion of his presentation of the charges made in the Indictment, the French prosecutor stated in precise terms the responsibility of all the defendants who are "guilty of having, in their role as the chief Hitlerian leaders of the German people, conceived, willed, ordained, or merely tolerated by their silence that assassinations or other inhuman acts should be systematically committed, that violent treatment should be systematically imposed on prisoners of war or civilians, that devastations without justification be systematically committed as a deliberate instrument for the accomplishment of their purpose of dominating Europe and the world through terrorism and the extermination of entire populations in order to enlarge the living space of the German people."

All that is left to us now is to demonstrate that the proceedings which have taken place before you have served only to confirm and reinforce the accusations and the statements formulated at the beginning of these proceedings against the major criminals who, in execution of the Charter and to satisfy the demands of justice, have been committed by the United Nations for trial by your Tribunal.

I ask the Tribunal to allow M. Dubost, the chief prosecutor, to present his final statement.

M. CHARLES DUBOST (Deputy Chief Prosecutor for the French Republic): Such are the facts set forth by the French Delegation. It was necessary to recall them in order to establish our contribution to the Trial. We do not intend, however, to deal with our own work apart from the whole resulting from the presentations of the other three delegations and the general proceedings. It is on the basis of this work as a whole that we shall proceed with our indictment and examine the personal responsibility of the defendants.

Taking one by one the deeds for which they are responsible, there are found to be murder, indictable theft, and other serious offenses against persons and property which are always punishable in civilized countries. M. de Menthon has already shown this in his introductory address.

The defendants did not actually commit the crimes; they were content to decree them. According to our French law, they are therefore accomplices in the technical sense of the term. Allowing for certain differences which are mostly only differences of form, the perpetrators of serious offenses and their accomplices are subject in most countries to capital punishment or to very severe penalties, such as forced labor or solitary confinement.

That is the Anglo-Saxon practice. This also holds good in France from application of Articles 221 ff, 379 ff, 59 ff of the French Penal Code. In Germany, Article 211 provides for the punishment of homicide; Article 212 relates to murder; Articles 223 to 226 to torture; Article 229 to poisoning and murder by gas. Article 234 covers slavery, reduction to serfdom, incorporation with a view to military service abroad; Articles 242 and 243 cover theft and pillage; Article 130 deals with the incitement of the populace to violence. The position of accomplices and co-originators is covered by Articles 47 and 49 of German law. Similar provisions exist in Soviet legislation as well as in the legislation of all great civilized countries.

The fact that, as leaders of the Reich and accomplices of the Führer, these men are all responsible for the crimes committed under their regime, and that in the eyes of all men of conscience their responsibility is heavier than that of those who carried out their orders, has been admitted by two of the defendants, Frank and Schirach.

Frank said:

"I have never founded extermination camps for Jews, nor was I ever in favor of the existence of these camps; but if Adolf Hitler placed this terrible responsibility on the shoulders of his people, I, too, share in it; for we conducted a campaign against the Jews for years, we made all kinds of statements against them . . ."

In his last few words Frank condemns, along with himself, all those who pursued the campaign of incitement against the Jews in Germany and elsewhere. Let us remember Frank's answer to the question put to him by his defense counsel as to the charges brought against him in the Indictment. It is true of all the defendants and still more of those who were closer to Hitler than he himself:

"As to these charges, I have only this to say: I ask the Tribunal to determine the extent of my guilt at the end of these proceedings; but I should like to say on my own account that after all I have seen in the course of these 5 months of the Trial, which have given me a general view of all the atrocities that have been committed, I myself feel thoroughly guilty."

Von Schirach for his part stated:

"This is the crime for which I am answerable, before myself, before God, and before the German people: I trained the youth of our country for the man whom, for years and years, I considered unimpeachable as the head of our country. I trained our youth for him. My crime lies in the fact that

I trained our youth for a man who was a murderer, who killed millions of people.... Any German who, after Auschwitz, still adheres to the racial policy, is guilty....

"I feel it my duty to say this."

Such cries of conscience were rare in the course of this Trial and more frequently, copying Göring's quibbling vanity, the defendants tried to extricate themselves by invoking a policy of neo-Machiavellism which would free the leaders of the State of all personal responsibility. Let us simply state that no such provisions exist in the laws of any civilized country, and that, on the contrary, arbitrary and aggressive acts aimed at personal liberty, at civic rights or at the constitution, are all the more severely punished in cases where they have been committed by a public functionary or high-ranking government official; and that the most severe penalties are reserved for the ministers themselves (Articles 114 and 115 of the French Penal Code).

But let us limit ourselves on this point. We aim only at recalling that each of the principal deeds charged against the defendants may be considered by itself as violating the criminal laws of one or other of the positive internal laws of every civilized country, or as violating that common international law, which M. de Menthon has already interpreted and which has been submitted here as the root of international custom, and that the punishment of each of these deeds is therefore not without foundation; on the contrary, even if we restrict ourselves to this preliminary analysis, the heaviest penalties have already been incurred.

We must, however, go further; for while it does not omit any culpable fact as such, the analysis of the defendant's guilt in the light of internal law is only a first approximation which would enable us to prosecute the defendants merely as accomplices and not as principal authors. And we are anxious to prove that they were in reality the principal culprits.

We hope to succeed in this by developing the following three points:

1) The defendants' acts are elements in a criminal political plan.
2) The co-ordination of the various departments headed by these men implies close co-operation between them for the realization of their criminal policy.
3) They must be judged as functioning within the scope of this criminal policy.

The acts of the defendants are the elements of a criminal political plan:

The defendants have been active in widely differing spheres. As politicians, diplomats, soldiers, sailors, economists, financiers, jurists,

or propagandists, they represent practically every form of liberal activity. We recognize unhesitatingly, however, the tie that binds them together. They have all put the best—or the worst—of themselves at the service of the Hitlerite State. To a certain extent they represent the brains of that State; but they themselves were not the whole brain. Nevertheless, no one can doubt that they were an important part of it. They conceived the policy of that State. They wanted to transform their thoughts into action and all contributed in almost the same degree toward its realization. This is true, no matter whether it applies to Hess or Göring, professional politicians who admit never having practiced any other profession but that of agitator or statesman, or to Ribbentrop, Neurath, Papen, the diplomats of the regime, or to Keitel, Jodl, Dönitz, or Raeder, the fighting men, to Rosenberg, Streicher, Frank, or Frick, the inventors—if that term can be applied to them—of the ideology of the system, to Schacht and Funk, the financiers without whom the system would have gone bankrupt and collapsed in the resulting inflation before it could rearm, to jurists like Frank, to publicists and propagandists like Fritzsche and—again—Streicher, devoted to the dissemination of the common idea, or to technicians like Speer or Sauckel, without whom the idea could never have been translated into action as it has been, to policemen such as Kaltenbrunner who destroyed morale by terror, to ordinary Gauleiters like Seyss-Inquart, Schirach, or—again—Sauckel, to administrators and high-ranking officials as well as politicians, who gave definite shape to the common policy conceived by the whole state and Party machine.

I know very well that the shadow of those who are absent looms over this machine, and today's defendants are perpetually reminding us of them: "Hitler wanted this, Himmler wanted this, Bormann wanted this." They say: "I only obeyed," and their defense counsels outdid them. Hitler, the monstrous tyrant, the fanatic visionary, imposing his will with an irresistible magnetic power—this is too simple; this is too sweeping. No man is entirely unreceptive to suggestion, insinuation, and influence; and Hitler escaped that law no more than any other man. We have had irrefutable proof of this in all the glimpses afforded us by these proceedings of the struggle for influence which went on in the "great man's" entourage. Malicious, underhand calumnies were circulated; there were intrigues which reminded us at times during the proceedings of the little courts of the Italian Renaissance. All the elements were present, even murder. Did not Göring, before he himself fell into disgrace, rid himself of Röhm and Ernst, who had plotted, not against their master, but against him, as Gisevius told us. So much imagination, such perseverance in evil, but also such efficiency, show us that Hitler was not blind to the actions and intrigues of the men around him. What a pity that these intrigues did not work in the right direction! But

we have direct evidence of Hitler's responsiveness to influences and it is given us by Schacht who, at the same time apart from these men, raises the question of the German masses, whose good judgment they had contributed to warp and whose worst passions they roused.

Did not Schacht say of Hitler in Court:

"I believe that at first his tendencies were not wholly evil; he undoubtedly believed that his intentions were only good, but little by little he became the victim of the charm he exerted over the masses; for he who begins by seducing the masses is in the end himself seduced by them, so that this relation between leader and follower helped to lead him into the erroneous ways of mob instincts, which every political leader should strive to avoid."

What was then the great idea behind it all? It was indisputably that of the conquest of living space by any and every means, even the most criminal.

At a time when Germany was still disarmed and when discretion was still necessary, Schacht, who was at Hitler's side, asked for colonies. We remember Hirscheid's testimony. He dissembled, however, and in part disguised the master conception of the state machine to which he belonged and we could not denounce this idea so easily were it not for the disconcerting naiveté of the "great man" who had laid his entire plan of campaign open to the inspection of the whole world 10 years before.

Indeed we read in *Mein Kampf* (Excerpt from Page 641), First quotation:

"Hence, the German nation can defend its own future only as a world power. For more than two thousand years the defense of our people's interests, as we should designate our more or less successful activity in the field of foreign affairs, was world history. We ourselves were witnesses to this fact: For the gigantic struggle of the nations in the years 1914-18 was only the struggle of the German people for its existence on the globe, but we designated the type of event itself as a world war.

"The German people entered this struggle as a supposed world power. I say here 'supposed,' for in reality she was none. If the German nation in 1914 had had a different relation between area and population, Germany would really have been a world power, and the war, aside from all other factors, could have been terminated favorably."

(Excerpt from Page 647) Second quotation:

"I should like to make the following preliminary remarks: The demand for restoration of the frontiers of 1914 is a

political absurdity of such proportion and consequences as to make it seem a crime. Quite aside from the fact that the Reich's frontiers in 1914 were anything but logical! For in reality they were neither complete in the sense of embracing the people of German nationality, nor sensible with regard to geomilitary expediency. They were not the result of a considered political action, but momentary frontiers in a political struggle that was by no means concluded; partly, in fact, they were the results of chance."

(Excerpt from Page 649) Third quotation:

"The boundaries of the year 1914 mean nothing at all for the German future. Neither did they provide a defense of the past, nor would they contain any strength for the future. Through them the German nation will neither achieve its inner integrity, nor will its sustenance be safeguarded by them, nor do these boundaries, viewed from the military standpoint, seem expedient or even satisfactory, nor finally can they improve the relations in which we at present find ourselves toward the other world powers, or, better expressed, the real world powers."

(Excerpt from Page 650) Another quotation:

"As opposed to this we National Socialists must hold unflinchingly to our aim in foreign policy, namely, to secure for the German people the land and soil to which they are entitled on this earth. And this action is the only one which, before God and our German posterity, would make any sacrifice of blood seem justified; before God, since we have been put in this world with the mission of eternal struggle for our daily bread, beings who receive nothing as a gift, and who owe their position as lords of the earth only to the genius and courage with which they can conquer and defend it; and for German posterity insofar as we have shed its blood out of which a thousand others will rise. The soil on which some day German generations of peasants can beget powerful sons will sanction the investment of the sons of today, and will someday acquit the statesmen of blood-guilt and sacrifice of the people, even if they are persecuted by their contemporaries."

(Excerpt from Page 687) Another quotation:

"A state which in this age of racial poisoning dedicates itself to the care of its best racial elements must some day become lord of the earth."

(Excerpt from Page 135)

"A stronger race will drive out the weak, for the vital urge in its ultimate form will, time and again, burst all the absurd

fetters of the so-called humanity of individuals in order to replace it by the humanity of nature, which destroys the weak to give place to the strong."

And then the machinery of State and Party gathered force. The Army secretly reorganized, was soon strong enough to allow Germany to rearm openly. Who, at that time, would have dared to interfere with the monstrous growth of this biological materialism? Hitler expounded his theories to a small circle and those who heard his words are by no means all Nazis. Informed of their master's aims, they were still willing to stay by his side, and that condemns them. Is this not the case with Raeder?

"It is not a question of conquering populations but of conquering territories suitable for cultivation. . . ."

Hitler, in conference with Von Blomberg, Von Fritsch, Raeder, 5 November, said: "Expansion cannot be achieved without breaking resistance and without taking risks . . ." (Document Number 386-PS).

After the disgrace of Von Fritsch and Von Blomberg, Keitel and Jodl, chosen for their servile attitude to the regime, had a solid weapon in their hands. On the eve of the conflict Hitler reiterated his ideas:

"Circumstances must rather be adapted to aims. This is impossible without invasion of foreign states or attacks on foreign property.

"Living space, in proportion to the magnitude of the state, is the basis of all power. One may refuse for a time to face the problem, but finally it is solved one way or the other. The choice is between advancement or decline. In 15 or 20 years' time we shall be compelled to find a solution. No German statesman can evade the question longer than that. We are at present in a state of patriotic fervor, which is shared by two other nations, Italy and Japan.

"The period which lies behind us has indeed been put to good use. All measures have been taken in the correct sequence and in harmony with our aims.

"After 6 years, the situation is today as follows:

"The national-political unity of the Germans has been achieved, apart from minor exceptions. Further successes cannot be attained without the shedding of blood. . . .

"Danzig is not the subject of the dispute at all. It is a question of expanding our living space in the East and of securing our food supplies. . . . The population of non-German areas will perform no military service, and will be available as a source of labor.

"The Polish problem is inseparable from the conflict with the West."

Extract from minutes of a conference held at the Reich Chancellery on 23 May 1939, in the presence of Hitler, Göring, Raeder, Keitel, and others (Document Number L-79, Exhibit USA-27).

And then came the war; and in a few months' time all Germany was led to believe that her strength was irresistible and that she was on the way to the conquest of the world. All that was implied by Hitler's cruel and monstrous words:

"As opposed to that we National Socialists must keep firmly to the aim of our foreign policy, namely, to secure for the German people the territory to which it is entitled in this world. And this act is the sole act which, before God and our German posterity, justifies bloodshed. . . ."

All the cruel and monstrous implications of these words were elaborated here.

Speech by Hitler on the Eastern Territories 16. 7. 41 (Document Number L-221):

"We shall emphasize again that we were forced to occupy, administer, and secure a certain area. . . . Nobody shall be able to recognize that it initiates a final settlement. This need not prevent us taking all necessary measures: shooting, deportation . . . *et cetera.*"

Further: "Partisan warfare will have one advantage for us; it enables us to eradicate all those who oppose us. . . ."

The same theme was taken up and cynically proclaimed by the spokesmen of the State. This Trial has brought you many echoes thereof. In a speech by Himmler we find these words again:

"What the nations can offer us of good blood we shall take, if necessary by taking their children away from them and bringing them up among us."

From the same speech:

"Whether nations thrive or starve only interests me inasmuch as we can use them as slaves for our civilization."

Still from the same speech:

"That 10,000 Russian women should die of exhaustion in digging an antitank ditch only interests me as to whether or not the antitank ditch has been completed for Germany.

"When somebody comes and says to me, 'I cannot dig the antitank ditch with women and children, it is inhuman, for it will kill them'; then I have to say, 'You are a murderer of your own kin, because if the antitank ditch is not dug, German soldiers will die and they are sons of German mothers.' "

And concerning the extermination of Jews:

"We have exterminated a microbe. We do not wish to be contaminated and die from it. We have fulfilled this duty for the sake of our people. Our spirit and character have not suffered from it" (Document 1919-PS).

The conquest of living space, that is, of territories emptied of their population by every means including extermination—that was the great idea of the Party, the system, the State, and consequently of all those at the head of the main administration of both State and Party.

That is the main idea, in the pursuit of which they united and for which they worked. They stopped at nothing in order to achieve their end: Violation of treaties, invasion, and enslavement in peacetime of weak and peaceful neighbors, wars of aggression, and total warfare, with all the atrocities which these words imply. Göring and Ribbentrop cynically admitted that they took both a spiritual and a material part in it; and the generals and admirals did their utmost to help matters forward.

Speer exploited to the point of exhaustion and death the manpower recruited for him by Sauckel, Kaltenbrunner, the NSDAP Gauleiter, and the generals. Kaltenbrunner made use of the gas chambers, the victims for which were furnished by Frick, Schirach, Seyss-Inquart, Frank, Jodl, Keitel, and the rest. But the existence of the gas chambers themselves was only made possible through the development of a political ideology favorable to such things; there, inextricably merged, we find the responsibility of all of them—Göring, Hess, Rosenberg, Streicher, Frick, Frank, Fritzsche, down to Schacht himself, the pro-Jewish Schacht. Did he not say to Hirschfeld: "I want Germany to be great; to accomplish this I am prepared to ally myself with the very devil."

He did enter into this alliance with the devil and with hell.

We may include Papen, who saw his secretaries and his friends killed around him and still continued to accept official missions in Ankara and Vienna because he thought he could appease Hitler by serving him.

Some are not present; some are dead, and some still living, as, for example, the industrialists who exploited the workers of the enslaved countries after putting Hitler and his system in power by providing the funds, without which no action could have been possible, and who put them in power as much for reasons of nationalistic fanaticism as because they expected from Nazism the guarantee of their privileges.

Everything kept steady, everything was indissolubly united because totalitarian policy, total war, the preparation and direction of the campaign of extermination of peoples for the conquest of

living space, implied the closest co-ordination and liaison between all the parts of the machine, between Police and Army; Foreign Affairs and Police and Army; Justice and Police; Economics and Justice; Universities and Propaganda and Police. And now we come to the second point which we have to present to you.

The co-ordination of the various departments at the head of which these men stood, implies close co-operation between them.

The Defense have tried to establish the existence of watertight partitions between the different elements of the German State.

According to them, there is supposed to be a parallel without a horizontal bond between the various State and Party departments, between individual ministerial administrations and between individual National Socialist organizations. The only connecting link would be the person of the chief, at the head. According to the Defense, the dominating principle of the German structure would be a personal union, not co-ordination and co-operation.

This is false. This is contrary to the principles of the Nazi State and requirements of a State in which every force strives toward the same goal and toward the actual reality of German life as revealed by the debates.

According to National Socialist conception, the Party must take the place of democracy. The Party is the political expression of the nation, which materializes in the political action of the State carried out by the activity of its administrations. The 1st of December 1933 Act proclaims, for the purpose of insuring the unity of the Party and State, that the Party is the exclusive support of the State conception, and indissolubly unites the Party and the State.

At the Party Congress in 1931, Hitler says:

> "It is not the State that created us. We create the State for ourselves. To some it may appear as the Party, to others as an organization, for yet others as something different, but actually we are what we are."

The aim pursued by the Party was therefore the achievement of an increasingly complete union between the State and the Party. This is the reason of the legislation which makes it compulsory for the head of the Party Chancellery to be consulted on the appointment of high-ranking officials, which incorporates Party chiefs into municipal administration, integrates the SS into the Police, and converts the SS to police officers, makes the direction of the Hitler Youth a State department, brings the direction of Party headquarters abroad under the Foreign Office, and merges the military personnel of the Party to an ever increasing degree with those of the Army. General Von Brodowsky's war diary, which we have submitted to the Tribunal, shows that this merger was a fact at the

time of the landing in France. Hitler, however, continued to maintain the system of parallel State and Party administration, because they exercised mutual control and supervision. But he insisted on the closest co-operation by both parties in order to be certain that the control was effective.

All the defendants, moreover, with the exception of Hess, are representatives of State departments. They cannot plead the absolute power of the Party as an excuse, since Party and State shared the power. The doctrine preached by the Party must guide the actions of the State, but the actions of the State in turn modify and develop the doctrine of the Party. Many items of the Party Program of 24 February 1920 never came into effect and were completely forgotten when the Party had been in power for some time. For instance, unearned income was not abolished (Item 11); trusts were not nationalized (Item 13); land reform was not carried out as provided for in Item 17;* interest on property and speculation in real estate remained. In the end, every aspect of German life was affected by the combined influence of the State and Party forces. All the departments of the State and the Party combined to make the component parts. Examples are plentiful and may be found in every State department.

Let us take the department of Foreign Affairs. Of all the administrational sections of the State, this, according to the orthodox conception, should be the farthest removed from political doctrine. Not so in Nazi Germany. With a view to the extermination of the Jews, headquarters abroad co-operated with the Reich Security Main Office through Wilhelmstrasse, as is shown by Documents RF-1206, 1220, 1502, 1210, and Exhibit Number USA-433 (Document Number 3219-PS). Wilhelmstrasse officials were called upon to advise the military police and Secret State Police (Document Number RF-1061). It was Best, Ribbentrop's representative in Denmark, who transmitted the order for the deportation of the Jews to the Chief of the German Police Mildner (Document Number RF-1503). Document Number RF-1501 shows Ribbentrop defending anti-Semitism to Mussolini and asking for Italian co-operation.

Ribbentrop and Kaltenbrunner are implicated in all the terrorist measures taken against the elite. The SD and Wilhelmstrasse are also involved in the organization of attacks of a provocative nature, such as that made on the broadcasting station at Gleiwitz in order to furnish the pretext of an attack by the Poles. The report made by the German military administration on the pillage of art treasures in France incriminates both the special staff of Rosenberg and the

* This program, known as the 25-point Program, was drawn up by Hitler, Drexler, and Feder and read out on 24 Feb. 1920 at the Hofbräu beer house. It was the program of the German Labor Party.

German Embassy in Paris (Document Number RF-1505). Wilhelmstrasse and the Army are involved along with the Police in the question of hostages, reprisals, and deportations. Examples could be multiplied. We do not claim to exhaust the subject, but only to give illustrations in support of an opinion.

Let us now examine the activities of Rosenberg's organizations. Rosenberg, by virtue of his function, co-ordinated several branches of the German State. His function in foreign policy was incorporated in the Ministry of Foreign Affairs. Moreover, he was the philosopher of the regime, Minister for the Eastern Territories, and chief of the special staff in charge of art treasures. The SD and the Secret Police worked in liaison with him (Documents Number L-188 and 946-PS).

We note the same liaison and the same co-ordination within the machinery of the State in questions of forced labor. All the ministers and higher functionaries, such as the Gauleiter, were involved, either by planning or preparing the operation, or simply enforcing it, or benefiting by it.

We remember the interministerial meetings in Berlin to discuss this subject and the conference between Sauckel, Kaltenbrunner, Speer, Funk, and the representatives of the OKW which forms the subject of Document Number PS-3819. We remember the meeting in Paris presided over by Sauckel and attended by representatives of the Army, the Police, and the Embassy (Document Number RF-1517).

Neither was economic life any more independent. During the war there existed under Funk a close co-operation between the economic and administrative services of the Army and those of economic affairs (Document Number RF-3 bis). The Ministry of Economy appealed to the Police to work out plans for economic Germanization (Documents RF-803 and 814). The Ministry of Finance subsidized the SS to carry out scientific research under abominable conditions using internees as involuntary subjects for experiment (Document Number 002-PS). Under Schacht and long before the war, politics, finance, and economic affairs were linked with the Army, at first secretly, and then publicly, and by bands closer than in any other country in the world. Schacht, in a speech on 29 November 1938, pronounced the following opinion on his achievement:

> "It is impossible that any other issuing bank has followed in peacetime a credit policy so audacious as that of the Reichsbank since the assumption of power by National Socialism. With the aid of this policy, however, Germany has created an armament that ranks foremost in the world, and this

armament has made possible the results of our policy . . ." (EC-611).

Nor was the judicial system more independent. We find it associated with the Police in highly criminal enterprises. Document Number 654-PS contains an account of a discussion between Thierack, Himmler, and others, at the end of which it was decided that antisocial elements and concentration camp prisoners—Jews, gypsies, Russians, Ukrainians, Poles—sentenced to more than 3 years' imprisonment should be turned over by the administration to Himmler to be exterminated through labor, and that in future individuals belonging to these categories should not be judged by ordinary tribunals but handed over immediately to Himmler's department.

Finally, during the war, the terrorist activities of the Army and the German Police and the activities of the State and the Party merged together. On occasion, the Police were subordinated to the Army, though retaining a certain autonomy, on the orders of the Reich Security Main Office. This was the case in Belgium. In France, although separate from the Army, the Police maintained close co-operation with it. The Army participated with the Sipo (Security Police) and the SD in the persecution of the Jews, the administration of the internment camp at Compiègne and the selection of hostages (Documents RF-1212 and 1212 bis) and execution (Document Number RF-1244). As we have seen, the Army and the Police were associated in the terrorist actions against the populations. The Navy and the Police are also associated in the massacre of the Commandos, and the Police were responsible for the murder of certain categories of war prisoners, although all these prisoners without exception came under the authority of the OKW (Document Number 1165-PS). One might multiply instances of the close association of Party machinery and State services and the co-ordination between them, which at times amounted to symbiosis. In one way or another, they all worked for the realization of the common political aim: the conquest of space by all possible means.

The co-operation of the defendants is an obvious consequence. Apart from the definite fact of co-operation alleged by us, all that we know of the general functioning of this totalitarian State, bound to the destiny of the Party, the vigorous measures taken by it against its opponents, for whom it prepared camps and gas chambers—all this leads us to affirm that the defendants, whether ministers, dignitaries or high functionaries with State or Party powers, combined with others who are not present—who are dead or held for Trial in other courts—to form one whole. And this entity was the Government of the Reich, this was the State-Party or Party-State; an entity, perhaps, but a conscious and criminal entity which

decreed the murder of millions of human beings in order to enlarge the Reich beyond all limits.

The acts of the defendants are not only those particular ones which we analyzed a moment ago in the light of the national penal codes of their own or our countries respectively. They include also these members of the German State for whom they acted, of that German State to which they gave life, conscience, thought, will, and for which they must now assume responsibility and bear the consequences, even the most extreme consequences, because they could not dissociate individually from these crimes. And this brings us to our third point.

The defendants must be judged on the basis of that criminal policy of which they were promoters and instruments.

Was it not Dr. Seidl who, defending Frank, has said (Page 55 of his text):

> "This is an acknowledged principle deriving from the penal code of all civilized nations, that a uniform and natural action must be appraised in its entirety, and that all circumstances which can be considered must be examined in order to form a basis for passing judgment."

All the crimes of the defendants lie in their political life. They are, as we know, the elements of a criminal State policy. To consider the defendants as offenders against common law, to forget that they have acted in the name of the German State and on account of that State, to apply the same standard to them as that applied to hooligans or to murderers, would narrow the scope of the Trial and misrepresent the character of their crimes. The crimes ordinarily tried by the courts of our countries show the criminal as opposed to the social order. These are individual deeds; their range is limited and their consequences circumscribed. Their crimes never strike more than a very few victims, and there are no examples in the annals of our countries of murder methodically perpetrated by terror organizations whose victims number more than a few hundred people.

That is the highest cost of a criminal plot within our own national communities. Organized as they are, extremely hierarchichal, and possessed of armed forces and judicial institutions, our national communities can eliminate delinquents before they can do all the harm of which they are capable.

These defendants, on the contrary, developed their criminal activity within the community of states in an unorganized world which was just beginning to be conscious of its own existence and at that time possessed neither armed power nor judges.

These defendants seized the German State and turned it into a gangster State, pressing into the service of their criminal plans all the executive power of that State. They acted as chiefs or heads of political, diplomatic, juridical, military, economic, and financial staffs. The activity of these staffs is normally co-ordinated in any country as they serve a common purpose deriving from a common political idea. But in National Socialist Germany, as we know, such co-ordination was reinforced by the overlapping of Party and administrative departments. Individual crimes were crimes of the community when they became the crimes of the State. Indeed, they were fostered by the political conception of each individual: "Conquest of space at any price."

State crimes committed by any one of those who controlled a major department were made possible only because all those who controlled every other major department contributed their share. If some of them and their departments defaulted, it meant the collapse of the State, the annihilation of its criminal power and with it the end of the gas chambers or the technical impossibility of creating them. But none had either the intention or the desire to default, for gas chambers and extermination, for the sake of gaining living space, were the dominant idea of the system—were, indeed, themselves the system.

Is not evidence of this unity in crime furnished by the very statements made by the defendants, the unremitting efforts of themselves and their counsels to prove the autonomy of their departments and throw the responsibility of the Army on to the Police, that of the Foreign Office on to the head of the Government, that of the Labor Department on to the Four Year Plan, that of the Gauleiter on to the generals; in short, by their attempt to persuade us that everything in Germany was organized in watertight compartments, whereas the interdependence of the administration and Party and the multiplicity of connecting and controlling links between the State and Party prove the contrary by their skillful dovetailing. All French people who have lived in occupied France remember having seen on the walls of local Kommandanturs a poster depicting the bricks of a wall with the words *Teneo quia teneor* printed over the picture. It was the whole motto of the system. It only needed a few bricks to be taken away for the wall to collapse. None of those men did that. On the contrary, they all contributed their own brick to the edifice.

In this way, Gentlemen, by presenting the facts, apart from any legal conception of conspiracy or complicity which might be debatable according to the varying opinions of the jurists, we furnish proof of solidarity and of the equal culpability of all in the crime.

To prove that they perpetrated the crime, it suffices to show that they were chiefs or high officials of the Party or one of the

main State departments and that they acted on behalf of the State; that, in order to extend German living space by every means at their command, they conceived, willed, ordered, or merely tolerated by their silence the violation of treaties guaranteeing the independence of other countries; prepared or declared wars of aggression; systematically carried out mass murder and other atrocities; and systematically committed demolition and looting without justification. This is the crime of the German Reich, and all the defendants have conspired to commit it.

We will prove this in the case of each of the defendants by means of examples taken from the proceedings.

Concerning each of the defendants, the three main points of this presentation will be the following:

1) The defendant occupied within the machinery of the State and the Party a position of eminence which endowed him with authority over one entire office or several.

2) The defendant complied with, if he did not conceive, the doctrine of the regime: Conquest of space by any means.

3) He personally played an active part in the political development of this doctrine.

As to Göring and Hess, the Tribunal will undoubtedly allow me to dispense with developing their case at length. They were the appointed successors of the Führer. They belonged to the Movement from the beginning. Hess assumed responsibility for the racial laws. Both played a part in formulating the political doctrine of the regime, of which they were the embodiment in the eyes of the masses. By their speeches, their lectures, they made this doctrine familiar to all classes. Göring made an active and essential contribution to the military and economic preparations for wars of aggression. Göring is the founder of the Gestapo and the concentration camps where millions of alleged enemies of the regime found their death, and where ultimately genocide was almost totally achieved.

The major part of his criminal activities concerns the putting into practice of the Four Year Plan, the sole object of which, as has been proved, was the preparation for war. In common with others, he is responsible for the deportation and brutal treatment of workers and for their allocation to spheres of production aimed against their own country. Further, he was party to the allocation of prisoners of war and political prisoners to labor directly connected with the war effort of the Reich. He organized the plunder of the occupied countries and the destruction of their economy. Lastly, he organized, with the help of Einsatzstab Rosenberg, the wholesale looting of works of art, often with the object of enriching his own collections.

Hess, by a decree of the Führer dated 21 April 1933, was given full powers to decide all questions of Party management. He participated in the preparation of laws and decrees in general, and even in the preparation of the Führer's decrees. He took part in the appointment of government officials and the chiefs of labor services. He strengthened the Party's hold on the internal life of Germany. He exerted a direct influence on the Army and on foreign policy. The part which he played in the growth of anti-Semitism implicates him in the criminal consequences of the Movement and condemns him.

Ribbentrop was one of the mainsprings of the Party and State machine. Placed in Wilhelmstrasse by Hitler who distrusted "old-fashioned" diplomats, he worked with all his might to create diplomatic conditions which would favor a war of aggression, the essential means for realizing the conquest of space. We recall the document submitted by our British colleagues establishing the fact that Ribbentrop assured Ciano in August 1939 that Germany would make war even if Danzig and the Corridor were ceded to her. As has already been shown, he and his office were involved in acts of terrorism and extermination in the occupied countries.

My comments on Keitel are equally brief. The conditions under which he consented to be placed by Hitler at the head of the High Command of the Army in the place of Von Fritsch and Von Blomberg, and brought into the councils of the Government, his political activities in these posts, as indicated by his presence at the Führer's side in Godesberg and later during the interviews with Pétain and Horthy—to say nothing of the orders which he signed, not the least notorious of which was the order for the implementation of the N.N. (Night and Fog) decree—all these facts reveal that we are dealing here not with an ordinary soldier, but with a general who was also a politician, under orders of the regime. The part he played in the arrest and murder of patriots condemns him. There is no doubt whatsoever that he participated in the work of extermination, if only by handing over to the Police for special treatment certain classes of prisoners of war in defiance of military honor. Moreover, we remember connections between his office and the police services and armed forces of the Party.

In the year 1932 Kaltenbrunner became a member of the Party and of the SS in Austria. He became Secretary of State for Security and the Police in Austria and then Chief of Police in Vienna and Chief of RSHA (Reich Security Main Office) from 30 January 1943 up to the capitulation. During this latter period he was responsible for the Gestapo, the Police, the Security Service and the concentration camps.

He was one of the most important factors in the criminal organization which carried out the policy of extermination and genocide.

His responsibility for these mass murders has been established. Orders for imprisonment and execution were signed by him.

"Detention and protective custody," he said, "were measures justified by the war." At the same time, however, he tried to make us believe that he opposed the introduction of these measures. It is impossible to believe this, for we have proof that he had supreme authority over the camps.

We are aware of Rosenberg's important position in the Third Reich. A department bore his name. Moreover, he was Minister for the Occupied Eastern Territories and an exponent of the Nazi doctrine. In "Blood and Honor" (Blut und Ehre), in particular, he revived and elaborated the theory of living space to which the so-called German race was entitled. He started with the unfounded statements that "the evolution of humanity owes its entire meaning to the irradiation of Nordism" and that "a decline takes place wherever this Nordic culture, instead of condemning Asiatics and Jews to permanent enslavement, mingles with these impure elements..." He concluded by saying that the continent must be subjected to the German philosophy and race. To restore the racial purity of Germany by any means was the subject of his speech at Nuremberg in 1933. He extolled the extermination of the Jews, and we know today that it was no empty phrase. Furthermore, in a report to the Führer dated 11 August 1942 (Document Number 042-PS) he wrote:

> "Decrees not to support an increase in the population of the Ukraine and to render inapplicable Article 218 of the German Penal Code were issued last year on the occasion of an address and were pronounced again on the occasion of a visit made by the Director of the Ministry of Health... In the Ukraine, measures were taken to prevent the spreading of epidemics, not in the interest of other peoples, but exclusively to secure German occupation and keep up the efficiency of the labor in the service of the German war industry."

Finally, he was implicated in the attack on Norway, and thanks to his special staff he conducted the methodical plundering of the artistic wealth of Europe.

Frank was one of the Party's earliest adherents. He was its legal adviser and took part in the elaboration of its program. He was also the Führer's adviser. He was Minister of Justice in Bavaria, then Minister of State charged with the co-ordination of justice in the Reich, and finally Governor General of Poland. It is he who tried to give legal form to the program of persecution and extermination drawn up by the State and the Party. He defended the establishment of concentration camps in the German

Legal Gazette in 1936 and he proclaimed that the second fundamental concept of the Hitlerite Reich was racial legislation. His personal activities in Poland contributed to the extermination of numerous Poles. He boasted of these activities in his diary.

Frick was a member of the Party from 1925. He became a Reichsleiter and afterward Reich Director for Elections from 30 January 1933 to 20 August 1943. He was chief of the service for the annexation of Austria by Germany and for the incorporation of the Sudetenland, Memel, Danzig, the Eastern Territories, Eupen-Malmedy, and Moresnet. He was also Director of the Central Office for the Protectorate of Bohemia-Moravia, the Government General, Lower Styria, Upper Carinthia, Norway, Alsace, Lorraine, and all the other occupied countries. He was Protector of Bohemia and Moravia for over a year. He had been Reich Minister of the Interior ever since the assumption of power and a member of the Defense Council. When he was elected to the Reichstag in 1924, he proposed anti-Jewish laws. Strictly obedient, on several occasions he gave expression to the political theories of the Party. In particular he declared:

> "In National Socialist Germany, leadership is in the hands of an organized community, that is, the National Socialist Party; and as the latter represents the will of the nation, the policy adopted by it, in harmony with the vital interests of the nation, is at the same time the policy adopted by the country" (Document Number 3258-PS).

He it was who appointed Himmler. He was responsible for the anti-Jewish legislation and ordered sterilization for the descendants of colored soldiers. Furthermore, he gave orders that the incurably insane should be put to death.

Streicher entered the Party almost as soon as it was formed. He indulged in unbridled propaganda against the Jews, both in his speeches and in his writings and incited the German people to persecute and to exterminate them. He was made Gauleiter. He does not dissociate himself from anything that has been done. He stated:

> "When one has known the profound depths of the Führer's character as I have done, and when I later learned from his testament that he deliberately gave the order to execute the Jews, well, I declare that this man had a right to do so."

Funk entered the Party in 1931 and was decorated with the Golden Party Badge. He was Chief of the Reich Press and Secretary of State for Propaganda; eventually he succeeded Schacht in the Ministry of Economics in 1937. He became Plenipotentiary for Economy and President of the Reichsbank in 1941. In 1932 he acted as middleman between the Führer and certain leaders of German

industry. He attended the meeting of industrialists organized by Göring on 20 February 1933 to obtain the political and financial support of industry for the realization of the Nazi program. He stated on 4 May 1946:

> "As State Secretary for Propaganda I have a formal responsibility. I have, of course, favored propaganda, as did all those who found themselves in positions of importance in Germany, for propaganda filled and permeated the nation's intellectual life."

He asked that the Jews be excluded from important positions and issued decrees to that effect. He received from the SS deposits of gold and valuables from the victims of mass exterminations. He built up Germany's economy and signed the Secret Law of 4 September 1938.

Dönitz was Commander-in-Chief of the German Navy. He succeeded Hitler with Seyss-Inquart as Foreign Minister. He was a recipient of the Golden Party Badge. His adherence to the criminal policy of the system is indisputable. He said, among other things (Document Number D-640): "The officer is the representative of the State. This talk about nonpolitical officers is sheer nonsense."

He recommended the use of labor from the extermination camps in order, he said, to increase output by 100 percent. He proclaimed unrestricted submarine warfare and ordered his sailors "to be hard," and not to effect any further rescues. He approved and extolled massacres of Communists.

Raeder was Commander-in-Chief of the German Navy before Dönitz. He was present at the conferences at which Hitler revealed his plans, notes of which were taken at the time. He put the Navy at the service of the Nazi regime. He conducted clandestine rearmament activities and contributed to the preparation of aggression against Poland and Norway. His contempt for international law is well known. It will suffice to refer to the memorandum of 15 October 1939, Document Number UK-65.

Schirach became a member of the Party at the age of 18. He joined in 1925, was Leader of the Hitler Youth from 1931 to 1940 and Gauleiter of Vienna up to the capitulation. He was one of the essential parts of the Nazi machine. He admits that as Gauleiter of Vienna he united in himself the powers of the State, the city, and the Party. He moulded the youth of Germany according to the ideology of the Party; and he has claimed responsibility for the consequences resulting from this exclusive formation. He allowed Himmler to recruit the SS from among the Hitler Youth.

From 1943 onward, as he himself admits, he was aware of the treatment inflicted on the Jews. Long before that date, however,

he had taken a very definite stand as to this question and had been active in conducting anti-Semitic propaganda.

Sauckel joined the Party in 1925. Gauleiter of Thuringia, Plenipotentiary General for the Allocation of Labor and honorary Obergruppenführer of the SS, he held a highly enviable position in the State and Party machine. A fiery propagandist, he delivered more than five hundred speeches, in all of which he expounded the Nazi ideology. He approved the principle of extermination. He said:

> "With regard to the extermination of asocial elements, Dr. Goebbels is of the opinion . . . the method of extermination by work is the best" (Document Number 682-PS).

He also stated:

> "The Führer has . . . said that we must revise our habitual conception about the migration of peoples. . . . It is the Führer's wish that a hundred years from now, 250 million people speaking the German language be settled in Europe" (Document Number 025-PS).

He personally played an active part in preparing the way for the exterminations. On 28 May 1946, he made here the following statement on the subject: "Best results in production can only be obtained by judicious use of manpower."

He forced over 2 million Frenchmen to collaborate in the war effort with their labor—to say nothing of millions of people of other nationalities. They were recruited by force with the help of the Police, the SS, and the Armed Forces (Document Number S-827):

> "I have"—he said—"given special authority to a few intelligent men, with a view to procuring labor. They are working under the direction of the Reichsführer SS and Police. I have armed and trained a certain number of them, and I must make application to the Ministry of Armaments for the necessary supplies for these men . . ." (R-124).

Through this declaration, the insinuation of counsel for Defendant Speer to the effect that the French Government had voluntarily given their assent to sending forced labor to Germany, is reduced to nought.

Alfred Jodl was Chief of the Operations Staff of the OKW. He enjoyed the absolute confidence of the Führer in the same degree as Keitel (Document Number 3798-PS). He took part in drafting the various plans for aggression. Encouraged to serve Hitler by the presence of such conservatives as Neurath, Papen, and Schacht at Hitler's side, he transmitted on 22 March 1943 the decree ordering the expulsion of Jews from Denmark and their internment in Germany. He was also responsible for the execution of

Hitler's order of 18 October 1942 for the annihilation of Commandos (Document Number 530-PS).

He took part in the discussions on the measures to be taken against airmen who were forced down. He signed the proclamation published by the High Command of the Armed Forces relative to the struggle against guerrilla troops—a proclamation containing regulations which outraged the laws of humanity.

Von Papen paved the way for Hitler's accession to power. The formation of his Cabinet on 30 May 1932 was contrary to the normal parliamentary procedure. On 2 June he ordered the dissolution of the Reichstag, thereby giving free rein to Hitler's terrorism. With respect to an interview with Hitler in June 1932 he said: "I have agreed to Hitler's demands, the right of the SS and SA to wear uniform."

At the same time Papen for his part was under no illusions as to the consequences of the Hitlerian agitation which he had himself instigated. But he preferred Hitler to democracy. After the elections of 30 July he endeavored to induce Hindenburg to accept Hitler and in the month of November he succeeded. He allowed Nazi functionaries to usurp the public services. Sir David Maxwell-Fyfe reminded us of Von Papen's vindication of National Socialism in Essen in November 1933. Papen expressed himself very definitely on the racial problem (speech at Gleiwitz in 1934).

> "Certainly no objection can be made to racial research and racial hygiene with the aim of preserving as far as possible the national characteristics of the people and awakening the spirit of national community."

We know what these measures were.

Papen served the Party and State administration until the capitulation. Neither the murder nor the imprisonment of his collaborators, of which the State and the Party were guilty, interrupted his activities.

Seyss-Inquart joined the National Socialist Party on 13 March 1938. He occupied various positions within the inner circle of the Party and in the State services, was finally made Assistant Governor of Poland and later Reich Commissar for the Netherlands. He declared—I quote: "I cling with unchanging tenacity to the aims in which I believe: Greater Germany and the Führer." (Excerpt from a letter of Seyss-Inquart to Göring on 14 July 1939; Document Number 2219-PS).

> "We hold the task of a generation, that is to say of the vital force of a people, to be the creation and the security of Lebensraum for the cultural and economic life of that nation."

(Speech of Seyss-Inquart of 23 January 1939; Document Number 3640-PS.)

> "As the task of a whole generation, the entire Vistula region, and not only the territories now gained in the East, must be settled by Germans... the Slovakia of today, the Hungary of today, the Romania of today, must be reorganized. I believe that the time has come for that.... I believe that soon the whole of this territory will be under the sole administration of Germany."

(Letter of Seyss-Inquart to Bormann of 20 July 1940; Document Number 3645-PS.)

Seyss-Inquart endeavored to realize the main political object of the Party: Conquest of space at all costs. He used all his available resources for the annexation of Austria, of which he was a native (He admitted that he had worked for 20 years to bring about the Anschluss). His collusion with Konrad Henlein for the reincorporation of the Sudeten territory in Germany has been proved. In Holland he gave orders for the execution of hostages and forged political and economic links between that country and the Reich. He is further responsible for the systematic pillage inflicted on Holland, for the deportation of the population and for the introduction of measures which led to famine.

Speer joined the Party in 1933. He was appointed personal architect to Hitler, and in this capacity he came into very close contact with the Führer. Chief of the Todt Organization from February 1942, Armaments Chief for the Four Year Plan from March 1942, Minister for Armaments from September 1943, he was one of the high-ranking officials in both the State and the Party. Speer utilized more than a million men in the Todt Organization and more than fifty thousand deported Frenchmen in the Ruhr territory alone in 1943. He is responsible for the ill-treatment of foreign workers in German factories, particularly in the Krupp plants. He employed more than 400,000 war prisoners in the armament industry. His delegates were authorized by the OKW to enter the camps and to select skilled workmen. He exploited the manpower of the concentration camps, affecting a total of more than 32,000 men, as he has himself admitted. He visited Mauthausen and shares the responsibility for the deportation of Jews to special labor camps, where they were exterminated, as well as the deportation of 100,000 Hungarian Jews to aircraft factories.

Von Neurath, Minister for Foreign Affairs from 1932, remained in this office when the Nazis seized power in 1933. He continued to occupy this post until 1939 and both he and his departments were gradually absorbed by the growing State and Party machine. As he was a member of the Government from the outset, he cannot

have been ignorant of the political ideology of the Movement. If he claims to have been shocked when he learned in 1937 that Hitler was planning aggression, he nevertheless remained in office and made no attempt to dissuade Hitler. On the contrary, it was he who by his approval encouraged Hitler to reoccupy the left bank of the Rhine—the first stage in the wars of aggression for the conquest of living space. He remained Minister of the Reich until the end. A conservative himself, his presence encouraged conservative elements in Germany to co-operate with Hitler. Mainspring of the Party and State machine, Von Neurath is closely connected with this machine in the crimes of extermination of which he was fully aware and which he himself decreed.

On 31 August 1940 Von Neurath transmitted to Dr. Lammers two memoranda, one drawn up by himself and the other by his Minister of State Frank, both advocating the total Germanization of Bohemia and Moravia and the elimination of the Czech intelligentsia. One of these reports contains the following lines:

> "With regard to the future organization of Bohemia and Moravia, all considerations should be based on the goal set for this territory, from the state political and national political angle. From the state political angle there can be only one goal: Complete incorporation into the Greater German Reich. From the national political angle: Settling these territories completely with Germans. A brief survey of the actual position as it presents itself from observations and experience gained since the annexation with regard to the state political and national political angle, indicates the path to be followed in order to reach the clearly defined and unequivocal goal. If things present themselves in such fashion then a decision must be taken on the fate of the Czech people so that the end in view may be achieved, which is to incorporate the country and populate it with Germans as quickly and as completely as possible" (Document Number 3859-PS).

Fritzsche served the Party before it came to power, but he did not actually become a member of it until 1933 and then he quickly became a remarkably efficient propagandist. In the course of the war he became the head of the radio service. Expounding the doctrine of the regime, he agitated for the massacre of Jews.

By means of repeated addresses he furthermore endeavored to imprint in the German mind the idea that its very life was imperiled by the Jews and democracy, and that it must yield itself unreservedly to the men of destiny who governed it.

Schacht's position is peculiar in itself. I shall deal with his case at greater length. He claims to be a victim of the system and is surprised to find himself here cheek by jowl with Kaltenbrunner,

his jailer. Schacht told us that the ideals of the Party did not appeal to him. Nonetheless, former Minister Severing stated at the session of 21 May 1946, that in 1931 he had learned from a communication of the Berlin police that Schacht had taken part in discussions with the Nazi chiefs. He added that Schacht's relations with plutocracy and militarism struck him as highly compromising, and that he would not have cared to be a member of the same Cabinet. We know that Schacht had established relations with Hitler in 1930, bringing to him the advantages of his repute in Germany and abroad. National Socialism derived considerable benefit from this.

At the National Front rally at Harzburg in October 1931, Schacht took his seat next to Hitler, Hugenberg, and Seldte. He had already attempted to draw Hitler into the Brüning Government. He was responsible for procuring funds for the decisive elections of March 1933 (USA-874, Document Number EC-440) at a meeting between Göring and the leading industrialists, on which occasion Hitler delivered a speech. After the seizure of power, Schacht played an outstanding role within the machinery of Party and State. He became President of the Reichsbank and Minister of Economics. On 19 January 1939 he left the Reichsbank, but he became a Minister of State and held that post until 21 January 1943. Clever, subtle, and capable of disguising his real thoughts behind a mask of irony or insolence, he never committed himself completely. It has, however, been proved that he persistently demanded increased living space for Germany. When he tried to mislead his questioners by speaking of colonial claims and it was pointed out that, considering world conditions, the possession of colonies could in no way assist Germany in solving her domestic problems, he failed to reply. He knew how to threaten the democracies and even resorted to a form of extortion through fear. When speaking of a Party success during a visit to America, he said:

> "I gave the greatest possible warning saying that: If you foreigners do not change your policy toward Germany, there will in a very short time be many more members and adherents of Hitler's Party."

He also said: "It is perfectly clear: We ask for territory in order to feed our people."

What part did he play in the development of the criminal policy? As soon as he was established in the Reichsbank, a vast program for financing public works was launched. All of these works—new railroads, motor highways, *et cetera*—were of strategic importance. Moreover, a large proportion of the credits was secretly used for purely military purposes.

From 1935 onward, rearmament was speeded up under the vigorous impulse of the new financial measures which he devised.

The academic and upright economist of tradition turned into a sharper in order to realize the great aims of the Party. By means of accommodation drafts—mefo drafts—the rearmament was financed. Drawn on a drawee who provided no cover, a company created to serve this express purpose, the blank drafts were endorsed by a second and similar company.

When the first draft was drawn, the drawer added extension drafts so calculated that the last fell due in January or March 1942. When we look back, the full significance of the date chosen becomes evident. The year 1942 was the date fixed by Schacht for the full extent of his fraudulent enterprise, in the hope that by that time the war would have solved the problem for him. The original draft was discounted by the Reichsbank. Bills were not subject to fiscal taxes so as to prevent any evaluation of the amount in circulation by means of a control in the yield of the taxes. Operations were conducted with the utmost secrecy. Even as early as 1935, all available Reichsmark credits were utilized by the Reichsbank for these armament drafts. At the end of 1938 there were 6 billion marks in mefo drafts in the assets of the Reichsbank and 6 billion marks worth to discount, of which 3 billion worth were short-dated. When the drafts fell due, Schacht could not but be aware that there were only three possible solutions:

1) Consolidation of the debt by foreign loans, which would not be extended to Nazi Germany, already armed to excess.

2) An inflation comparable to that of 1923, which would mean the end of the regime.

3) War.

The scope of the rearmament operations financed by Schacht up to 31 December 1938 is revealed by calculations made by M. Gerthoffer of our delegation (we attach his report hereto). Let us not forget that Hitler, in his letter to Schacht, dated 19 January 1939, wrote: "Your name will be connected above all and for all time with the first period of national rearmament" (EC-397). We may take note of that—from April 1935 to 31 December 1938, there were spent 345,415 million francs on the rearming of Germany. During the same period France spent only 35,964 million francs. Such a discrepancy shows quite clearly what Schacht's aim was. This was Schacht's doing and his alone. On the battlefields of France in 1940 we find again the same ratio of 10 German armored divisions to 1 French division.

Schacht's retirement from the Reichsbank and the Ministry of Economics can in no way speak in his favor. Difficulties arose between Göring and himself in regard to the realization of the Four Year Plan. Schacht would not admit Göring as his superior. He resigned from the Ministry of Economics on 26 November 1937, but

remained president of the Reichsbank and Minister without Portfolio. On 7 January 1939 he handed Hitler a memorandum pointing out that the volume of the mefo drafts in circulation through his own fault was threatening the stability of the currency. Technically speaking, his position at the Reichsbank had become untenable. His retirement, therefore, was due to questions of economic organization and not to political reasons. In any case, he retained the functions of Minister without Portfolio, and did not give up this post until January 1943, at the time of the Stalingrad defeat, when both the Party-State machine and the Reich were beginning to break down. Obviously he no longer served any useful purpose, but it is equally obvious that he might again have done so at some later date, in the capacity of negotiator of a peace compromise.

Are his further political troubles due to the intrigue by Hitler's advisers which we can now well imagine, or were they due to Machiavellism on his part, or to sheer bad fortune? What is the significance of the part played by this ill-starred man who succeeded in gathering round him all of the great financiers and industrials with pan-Germanic leanings, who helped Hitler to power, whose presence inspired confidence in Nazi Germany, whose financial wizardry provided Germany with the most powerful war machine of the age, and who did all this to enable the Party-State machine to hurl itself forward to the conquest of living space? This man was among those mainly responsible for the criminal activities of the Party-State machine. His financial genius was that of the Nazi State; and there is no doubt of his participation in its crimes. It is of fundamental importance. The measure of his guilt is full, his responsibility complete.

As for the last of Hitler's confidants, Bormann, we know that he was responsible for the mass extermination of the Jews. There is no need to say more.

I have now reached the end of my demonstration of the guilt of each individual defendant. Not that the subject is exhausted, but the time allowed by the Tribunal for each representative of the Prosecution to address the Court only permits us to sketch the outline of a presentation which deserves more systematic treatment. A multiplicity of examples could be found to illustrate our presentation. All the facts submitted during the last 9 months by all four delegations fit of their own accord into our plan; and this in itself is sufficient to prove that our logic is unimpeachable and that our conclusions are in strict accordance with the truth.

We consider, therefore, that proof has been furnished that all these men have been parties to the crimes of the German State, that all these men were in fact united in pursuit of the same political aim and that all of them have in one way or another participated

in the greatest crime of all, genocide, the extermination of the races or people at whose expense they intended to conquer the living space they held necessary for the so-called Germanic race.

We have all heard the objections raised by the Counsel for the Defense. It is Dr. Seidl who stated them most forcibly (Page 25 of his speech for Frank).

> "The law in force"—he said—"is based on the fundamental principle that international law deals solely with the sovereign state and not with the isolated individual."

In conclusion he denies the right to sentence these men. First let us say that not one of the defendants was an "isolated individual" of whom Dr. Seidl speaks. We think that we have demonstrated their co-operation and solidarity, strengthened by the Party system beyond the usual intercourse between the ministers and principal administrators of any democratic country.

We may observe in addition that it seems intolerable to every sensitive human being that men who put their intelligence and their good will at the disposition of the state entity in order to make use of the power and the material resources of this entity to slaughter, as they have done, millions of human beings in the execution of a criminal policy long since determined, should be assured of immunity. The principle of state sovereignty which might protect these men is only a mask. This mask removed, the man's responsibility reappears. Dr. Seidl knows that as well as we do. But he says, "such is the international law in force." What respect on his part for the law in force, but how surprising in his mouth the words which follow! A few moments later, examining the Hague Conventions of 1907, which, we must remember, have not been denounced by any of the signatories, not even by Germany, he complacently points out that they were inspired by the experiences made during the wars of the nineteenth century and are no longer valid in the twentieth. Modern wars were no longer subject to the restrictions of the Hague Conventions. He states further:

> "Under these circumstances one cannot make use of the prescriptions of the Hague Convention with regard to land warfare—even if interpreted in the widest sense and adapted in a suitable manner as a basis for the criminal responsibility of the individual."

Dr. Seidl therefore considers international law as static when he believes that this will enable him to draw favorable conclusions therefrom; but when this law condemns his client, it must be considered as still in process of evolution.

Dialectics of this kind, which make use of paralogism, are specious. Dr. Seidl is well versed in the art of sophism, but he

convinces no one. The immunity of the chiefs of state and their associates was hardly conceivable when it was allowed to be subject to the rules and restrictions of custom, convention, and international law. This immunity became intolerable from the moment that they freed themselves from every rule, and pressure from the universal conscience gave rise to new developments in international custom in order to oppose it. I have already shown this at the end of my statement last February; I shall not revert to that point. It should suffice to add that the Charter of 7 August 1945, taking in consideration the work of the various war crimes commissions from 1940 up to the capitulation, upheld the conclusions drawn by a Frenchman, M. de Lapradelle, at the War Guilt Commission 1919. The defendants are arraigned before you on account of the acts they committed on behalf of the German State and if it is necessary that law should reinforce the authority of custom, then the Statute of London, drawn up on the basis of common law in course of formation, still justifies our study of the defendants' responsibility with regard to the crimes of the German State. In fact, Article 6 of the Statute deals only with crimes committed on account of the state.

The impression we draw from the final pleadings is that most of the defense counsels put all their hopes in a concise juridical or pseudojuridical process of reasoning. Many questions were debated. Are there just and unjust wars, defensive wars and wars of aggression, is there a world-wide juridical conscience? Are there unequivocal criteria of aggression? This is what worries the Defense; and not the question of the extent to which those who have collaborated in the work of extermination should be punished.

When the defense counsels speak of "law in force" they do so for the purpose of denying this Tribunal the right to condemn, and Dr. Jahrreiss denied all authority to the law "such as it should be conceived" in the light of morality and progress (Page 3). All of them forget that the law in force is not only the law of the past, the only one to which they themselves appeal, but that the law in force is also that which the judges invoke in a concrete manner from the bench. All of them forget that jurisprudence is subject to the laws of evolution. Where no written law exists one can only speak of the former tendencies and ascertain whether they are still valid and can be invoked. But let us stop here. We would ourselves confuse the issue.

The unique fact of this Trial, the fact that stands out above all others, is that of the methodical, systematic extermination of all those who occupied the living space coveted by Germany.

Other crimes have certainly been committed, but only as means to an end. We are tempted to describe them as secondary and

accessory to the main crime, so overwhelming is the atrocity of the latter.

We must realize the full magnitude of these atrocious crimes and appreciate the danger to humanity which is constituted by such a precedent, in order to exact adequate punishment.

Atrocity of the State-Committed Crime.

We have already shown that the crime committed by these men is not a simple crime. The common criminal knows his victim; he sees him with his own eyes. He himself strikes and knows the effect of his blow. Even if he is only an accomplice he is never sufficiently dissociated, morally and psychologically speaking, from the chief perpetrator, not to share to a certain extent his apprehensions and reactions when the blow is delivered and the victim falls.

Genocide, murder, or any other crime becomes anonymous when it is committed by the State. Nobody bears the chief responsibility. Everybody shares it—those who by their presence maintain and support the administration, those who conceived the crime and those who ordained it, as well as he who issued the order. As for the executioner, he says to himself, "Befehl ist Befehl," "An order is an order," and carries out his hangman's task.

Those who make the decision do so without shuddering. It is possible that they have no accurate and concrete picture in their minds of the consequences of their orders. The stupefaction of some of the accused immediately after the showing of the film about the camps is understandable in the light of this reflection. As for those who promote the execution of the crime by their general co-operation in the work of Party and State, they feel that they are passive spectators of a scene which does not concern them. They have, in any case, no punishment to fear. In the German sphere the State and the Party are strong, and determined to remain so for a thousand years. They have destroyed justice. In the international sphere, the prevailing code insures—or, at least, is believed to insure—immunity. Moreover there is no permanent international jurisdiction capable of opposing the gangster states. The possibility of a military defeat is not taken into consideration, since the precautions taken are apparently so thorough. It is a remarkable fact that, allowance made for the delay necessary for the installation of gas chambers, the peak of the murders coincides with the period in which the State and regime believe in certain victory, or have not yet taken seriously the omens of defeat. It is really the perfect anonymous crime imagined by the French moralist when he propounded the case of the mandarin as a test of moral conscience. And all the conditions favor the absence of a reaction. The facts

have demonstrated that none of those men have experienced the decisive revulsion in those circumstances.

Most of them did feel that they had played a part in the tragedy. They have, I think, been more intent on relieving their consciences than on attempting to deceive their judges by shelving guilt onto their neighbors. Few of them have had the courage to acknowledge, as did Schirach and Frank, that they were component parts of the whole system, and as such could not evade responsibility. The others deny it at the risk of letting the guilt fall upon the German people who were incapable of throwing off the yoke of their evil masters. They attempt, in the exposition of their case, to minimize their responsibility in the hope of conjuring it away, but since Severing's statement and those made previously by the mayor of Oranienburg and the mayor of Buchenwald and confirmed by Frank, are true, namely, that there were rumors all over Germany that people died in these camps, as everybody now knows, do they expect to make us believe that they alone were in ignorance thereof?

The less guilty among them, if one can establish different categories of "major criminals," did not dare to object, but their criminal cowardice had such appalling consequences that they cannot possibly justify any lessening of the penalty.

As we now see, crime committed by the state in a regime in which state and party are one, and in which popular control is prevented by the absence of freedom of thought, freedom of expression and free elections, is, from the point of view of the criminal, the easiest to commit. Moreover, technical progress all over the world has harnessed almost every natural force in the service of mankind. His capacity to work evil has been considerably increased thereby. Moral restraint has at the same time been relaxed by the pursuit of materialistic gratification which is also the corrupt fruit of material progress not controlled by intellect.

Generally speaking, crime seems to be on the increase in every state, in spite of highly improved methods of repression. In the international scheme of things, the process is similar. The only difference is that it is on a larger scale, because as yet there is no international means of repression. The industrial revolution and the development of natural sciences have multiplied the virtual power of states. If the state keeps in its own hands natural wealth and its exploitation, accentuates its grip on credit by monetary operations, increase in taxation, the levying of additional loans, whether voluntary or forced, if it binds its people even more firmly to it by developing public welfare institutions, and influences their mental life by means of radio propaganda, employing with this end in view eloquent propagandists capable of arousing the blind passions of the mob within men most peacefully disposed and most

widely scattered—if this state at the same time takes away from its opponents every possibility of expressing their views, prevents any control by the people and every form even of private criticism, it becomes an absolute ruler possessed of tremendous means of action for better or worse. Every criminal technique is within its reach and it can make unrestrained use of it unless, Gentlemen, you introduce the element of sanctions in international law. It must be possible henceforth to put an end to the criminal activities of a gangster state through the power of a superstate organization directed by a legal institution of the same kind, otherwise the freedom of nations is doomed. The weapons of revolt fell from their hands as soon as states—and states alone—could possess methods of destruction against which the courage of individual citizens was unavailing. Operated by a small number of men devoted to the criminal regime, those arms which are the property of the state can drown in blood the slightest attempts at resistance, and although revolt against tyranny is still the most sacred of duties, such revolt is now hopeless. This is the danger, and Germany succumbed to it. It is true that every favorable condition was present at the same time. Under the impulse of the industrial revolution which from 1850 onward was more violent in this country than in any other, social standards have changed enormously; and at the same time the population itself has changed from rural and agricultural to urban and industrial. This has resulted in a lowering of its mental level which has brought with it disastrous consequences, since the bourgeoisie had received no political education under the Empire.

Deliberately kept at a distance from public affairs by their former rulers, the German masses, with regard to the industrialist upper class and proletariat, were interested only in the economic development of the Reich, and, with regard to the middle class, only in the Army and the future Reich. When, after the first World War, the Germans had to endure the disappointment of defeat; when to shabby and commonplace surroundings were added all the rancor and resentment described by the Defendant Göring at the beginning of his testimony, in addition to the bitter consciousness of social and material downfall; when youth in particular strove to make its hopes a concrete reality, Pan-Germanism awoke, was disseminated and brought down to the level of the mob and then came within reach of all the discontented elements. At the same time, the old antithesis between vital force and intellectualism, culture and civilization, healthy eagerness and decadent lassitude, the cult of life and the cult of intellect was brought to life and given definite shape for the use of simple and puerile minds in the form of the dynamic antithesis between the Nordic Aryan and the Semitic Jew. With the help of appropriate education this biological materialism was easily imposed. The ground had long

been prepared. The German is particularly attracted by inculcated doctrine because it alone can supply the lack of personal, independent discipline which is characteristic of him on the intellectual and moral plane. He loves anything that can be recited as a universally acknowledged creed, a stereotyped phrase suitable for use on all occasions. For this reason, young Germans learned for their Abitur examination the six races admitted by Guenther just as they learned grammar, and no more dreamed of doubting the former than they doubted the latter. And when the German mentality accused nations as much alive and as strongly attached to their land, their traditions, and their flexible and varied human culture, as England and France, of being content to possess only a puny and artificial intellectual life, when it accused them with the crime against life—and Dr. Stahmer echoed this—the German mind created for itself, by reason of the coarse and facile creed which it claimed to impose upon all alike, an intellectualism differing from ours in its danger and its artificiality. The result of these so-called ethics of life was a practice and a doctrine of pure opportunism—collective or social, pseudoscientific, biological, materialistic—which resulted in the sterilization, the physiological observations made in the camps, and 12 million dead. The reflection of the old French philosopher comes irresistibly to our minds when we are confronted with this result: "Science without conscience is but ruin of the soul." A neo-Machiavellism, an example of which was afforded us by Göring in his statement, took root.

I read lately somewhere in a final pleading that right in itself does not exist, and that efforts to establish a dividing line between right and wrong are guided by historical and national standards (Dr. Nelte). Hitler had already said: "Right is what is profitable to the nation" and, according to his defense counsel, Frank paraphrased this statement as follows: "What is profitable for the people is right. Collective interests take precedence over individual interests." On reading this, I thought of the answer which would have been given by the absolutist, Bossuet, who knew how to determine human standards. The Defense Counsel compared French absolutism with Nazism. Here is my answer:

> "Politics sacrifice the individual to the common good, and this is right to a certain extent; it is good that one man should die for the people. By that, Caiaphas understood that an innocent person could be sentenced to the supreme penalty for the sake of the common good, which is never allowed, for, on the contrary, innocent blood cries for vengeance against those who shed it."

We know what consequences the Nazi precepts could produce. The witness Roser reported the words of this young German soldier

who, after describing a massacre in a ghetto, concluded: "Ah, my dear friend, it was horrible, but . . . an order is an order." The Tribunal will find Kramer's terrible words at the end of Document Number F-655, which is in one of the document books submitted by the French Delegation. Before he was made commandant of the Bergen-Belsen Concentration Camp, Kramer commanded the Natzweiler Camp in Alsace, where he himself asphyxiated 80 persons by gas. This has been proved. In answer to the question: "What would you have done if they had not all been dead?" he said:

> "I should again have tried to asphyxiate them by letting a second dose of gas into the room. I did not feel any emotion while carrying out these acts, for I had received orders to execute the 80 internees in the way I told you. After all I have been trained in that way."

What a terrible charge against the system! Before becoming a murderer by order, this man had been a bookkeeper in Augsburg. How many peaceful bookkeepers so trained are still in Germany today? And now "innocent blood cries for vengeance."

Conclusion:

You know the crime! You know why and by what means it was perpetrated! This heinous and unprecedented crime is that of the National Socialist Party-State, but the defendants in their capacity as chiefs of the National Socialist Party and high State officials have all accepted major responsibility in the conception and perpetration of this crime. Their participation in the crime of the Party-State is their own personal fault and brings with it no claim whatsoever to immunity! Proof has now been brought against them!

They must be punished; you know also the dangers to which the world is exposed by their crime and the misery and misfortune it has brought to mankind. You must hit hard without pity. It is enough that the verdict be just! To be sure, there are degrees in their guilt. Does it follow that there must be degrees in the penalties themselves, when those whom we consider the least guilty merit the death penalty! Tomorrow, this International Trial over and the principal war criminals sentenced, we shall go back to our own countries where we may have to prosecute before our own tribunals those who merely carried out the orders of the National Socialist State, who only played the part of hangman.

How could we demand the death penalty for another Kramer, or another Hoess, or for the camp commandants who have on their conscience the deaths of millions of human creatures whom they killed by order, if we hesitated today to demand the supreme

penalty for those who were the driving force of the criminal State which gave the orders.

The fate of these men lies entirely with your conscience! It is now out of our hands, our task is finished. Now, it is for you in the silence of your deliberations to heed the voice of innocent blood crying for justice.

THE PRESIDENT: The Tribunal will adjourn.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

THE PRESIDENT: I call on the chief prosecutor for the Union of Soviet Socialist Republics.

GEN. RUDENKO: Your Lordship, Your Honors.

We are summing up the results of the legal proceedings against the major German war criminals. In the course of 9 months all the aspects of the case and all the evidence presented to the Tribunal by the Prosecution and by the Defense have been subjected to a careful and detailed scrutiny. Not a single deed of which the defendants have been accused has been left without verification, not a single significant circumstance has been overlooked during the investigation of the present case.

For the first time in the history of mankind criminals against humanity are being held responsible for their crimes before an international criminal tribunal; for the first time nations are trying those who have soaked large areas of the earth with blood, who have annihilated millions of innocent people, destroyed cultural treasures, instituted a systematic massacre and torture, exterminated old people, women, and children, and who in their mad desire for world domination have hurled the universe into an abyss of unprecedented misery.

This Trial, to be sure, is the first of its kind in legal history. A tribunal is sitting in judgment, a tribunal created by the peace-loving free countries, who represent the desire of mankind for progress and to prevent the recurrence of calamities suffered, determined not to permit a gang of criminals to carry out with impunity their preparations for the enslavement of nations and the extermination of peoples in the realization of their fanatic plans. Mankind has called the criminals to account and we, the prosecutors, on behalf of all mankind, are the accusers at this Trial.

And how pitiful are the efforts to dispute the right of mankind to judge its enemies, how vain the efforts to deprive nations of the right to punish those who made enslavement and genocide their aim, and who for many years strove to realize this criminal aim by criminal methods. The present Trial is being so conducted that the defendants, who are accused of the most heinous crimes, are given every possibility to defend themselves and are offered all the necessary legal guarantees. In their own country the defendants who stood at the helm of the Government destroyed all legal forms of justice, and discarded all the principles of legal procedure accepted by civilized mankind. But they themselves are being tried by an international court with legal guarantees to assure all the rights of defense.

We are now summing up the results of the legal proceedings, we are drawing conclusions from the evidence examined before the Court, we are considering all the data upon which the accusation is based. We now ask: Were the charges levied against the defendants proved before the Court, has their guilt been established? There is only one answer to this question: The legal proceedings fully confirm the charges.

We charge the defendants only with those facts which have been fully established and proved beyond all doubt in the course of the proceedings in which monstrous crimes have been proved, crimes which were prepared over a period of many years by a band of bragging criminals who had seized power in Germany, and who perpetrated these crimes over a period of many years, without regard for the principles of law or the most elementary standards of human morality. These crimes have been proved, the defendants' testimony and the arguments of the Defense have been powerless to refute the charges—they cannot be refuted because it is impossible to refute the truth, and truth is the enduring result of this Trial, the consequence of our long and stubborn efforts. The accusation has been proved in every detail. It has been proved that there existed a Common Plan or Conspiracy in which the defendants participated for the preparation of aggressive wars, in violation of international law and for the enslavement and extermination of peoples. There can be no doubt as to the existence of such a plan just as there is no doubt about the leading part played in it by the defendants. This point of the accusation is confirmed by all the data introduced during the legal proceedings by irrefutable documents, and by the testimonies of witnesses and of the defendants themselves.

All the activities of the defendants were directed toward the preparation and the launching of aggressive wars. All their so-called "ideological work" consisted in the cultivation of bestial instincts, in the installation of the absurd idea of racial superiority in the conscience of the German people, and in the practical realization of their plans for the extermination and enslavement of peoples of "inferior" races, who were supposed only to serve for fertilizing the growth of the "master race." Their "ideological work" consisted in a call to murder, to plunder, to the destruction of culture, and to the extermination of human beings.

The defendants prepared these crimes a long time in advance and then committed them by attacking other countries, seizing foreign territories and exterminating the population. When was this plan or conspiracy conceived? Of course, it is scarcely possible to give an exact date, day and hour on which the defendants conspired to commit their crimes. We cannot and shall not establish our conclusions and assertions on guesses and suppositions. But it

must be considered as established beyond any possible doubt that from the moment when the fascists seized power in Germany they embarked on their criminal aims and utilized this power for the preparation of aggressive war. All the activity of the defendants was directed toward the preparation of Germany for war. The rearmament and reconversion of economy for war purposes is an irrefutable fact—it has been proved by documents and admitted by the defendants themselves.

We may ask, what was this war for which the defendants began to prepare immediately after the seizure of power? Could this possibly be a defensive war? But then nobody intended attacking Germany; nobody had any idea of the kind, and—in my opinion—such an idea could not even have existed. Since Germany was not preparing for a defensive war and inasmuch as the very fact that she did prepare for war has been established—it is evident that she was preparing for a war of aggression. That is the logic of the facts and such are the facts themselves. Germany initiated and waged this very war which she had been preparing, and in 1937-39 occurred precisely that for what she had been preparing since 1933. Hence the conclusion: The plan or the conspiracy existed at least since 1933, that is, from the moment when the fascists seized power and used it for their criminal purposes. These are the facts which are confirmed by the words of the defendants themselves uttered at a time when they did not expect that they would ever be defendants. It is enough to mention the speeches of Schacht, Krupp and others in which they describe how the fascist Government was preparing for war and how all fields of political and economic life were subjected to this one purpose.

I consider as fully proved the charges against the defendants to the effect that in 1933, when the Hitlerites seized power in Germany, they created a plan or conspiracy for the perpetration of crimes against peace, war crimes and crimes against humanity. The legal proceedings have unequivocally proved the crimes against peace committed by the defendants, which consisted in planning, preparing, initiating and waging aggressive wars, in violation of international treaties, agreements and assurances. Here the facts speak for themselves—wars which involved innumerable victims and destruction, wars whose aggressive nature has been undoubtedly established. The guilt of the defendants in the perpetration of crimes against peace has therefore been fully proved.

The charge of perpetrating war crimes, in waging war by methods contrary to all laws and customs of war, has also been fully proved. Neither the defendants themselves, nor their defense counsel could raise any objections to the very fact of their having committed these crimes.

All that they could say to this was that the defendants themselves had not committed these atrocities, as for instance the extermination of people in "murder vans" and concentration camps; they had not destroyed the Jews with their own hands, and some of them had not even known about such particular facts. But that such facts really did exist the defendants themselves do not deny. The defendants admit these facts. A fruitless method of defense!

Certainly, the defendants occupying high leading posts in Hitler's Germany were in no need of personally shooting, hanging, smothering, freezing live people to death by way of an experiment, and so on. Their subordinates did that according to their instructions, their henchmen did the dirty work, so to speak, while the defendants only had to give orders which were obeyed without a murmur. Therefore, the attempts of the defendants to deny their connection with these henchmen, to detach themselves from them, were hopeless.

This connection is evident and indisputable. If the commandant of Auschwitz, Rudolf Hoess, extracted the gold teeth of the dead, we may say that the Reich Minister, Walter Funk, opened special vaults in the cellars of the Reichsbank in which to keep these gold teeth. If Kaltenbrunner's subordinates exterminated people in "murder vans," the vans themselves were built at the works of Sauer, Daimler and Benz, who again were the subordinates of the Defendant Speer. If the prisoners of war were destroyed by professional henchmen of the Death's-Head unit and by the camp guards, the orders to exterminate were signed by Keitel, Generalfeldmarschall of the German Armed Forces. That is to say, it is the defendants who gave the sign for extermination, issued the orders to create a special murder technique, and explained the ideological reasons for the right of the master races to exterminate "inferior races." It was they who calmly and ruthlessly watched the tortured victims and, as Hans Frank, delivered solemn speeches about "one more step forward" taken by German fascism toward ridding "the living space" of "the inferior races."

The defendants are responsible for every murder, for every drop of innocent blood shed by Hitler's hangmen, for between them and the direct perpetrators of the crimes, murders, tortures, there is a difference only in rank and scope of action. Those are the direct hangmen, and these are the principal hangmen, hangmen of a higher rank. They are far more dangerous than those they trained, in the spirit of hatred toward humanity and cruelty, and whom they now repudiate in order to save themselves.

The criminality of the defendants in the perpetration of war crimes has been fully proved in the sense that they initiated a system of exterminating prisoners of war, peaceful inhabitants,

women, old men, and children. It is their fault that wherever the German soldier stepped there lay the heaps of murdered and tortured people, ruins and places left barren by fire, devastated towns and villages and the land desecrated and soaked in blood.

The crimes committed against humanity have been completely proved. We cannot omit the crimes committed by the defendants in Germany during their domination: The extermination of all those who in any way expressed their discontent with the Nazi regime, the slave labor and the extermination of human beings in concentration camps, mass extermination of Jews, and the same slave labor and extermination of people in the occupied territories—all this has been proved and the charges are irrefutable. What means of defense have the counsels used, what kind of proofs and arguments could they give to refute the charges?

The arguments of the defendants may be divided into two main groups. First, a number of witnesses summoned by the Defense Counsel. These witnesses were to extenuate the guilt of the defendants by their evidence, to play down the part taken by them in committing the crimes, and to rehabilitate them by all possible means.

These witnesses themselves were, in most cases, defendants in other trials. How can we discuss the objectivity and authenticity of the evidence given by such witnesses of the Defense, if the innocence of the Defendant Funk should be confirmed by his deputy and accomplice, a member of the SS since 1931, Hayler, bearing the rank of SS Gruppenführer; if the criminal Rainer, member of the fascist Party since 1930, and Gauleiter of Salzburg and then of Kärnten, was summoned to give evidence on behalf of Seyss-Inquart.

Those so-called "witnesses"—such as for instance Bühler—the right-hand man of the Defendant Frank and accomplice in all his crimes, or Bohle, one of the principal leaders of the Hitlerite espionage and counterespionage activities and chief of the Auslands-Organisation of the fascist party, came here in order to commit perjury to try to protect their former "bosses" and to save their own lives.

And yet most of the "witnesses" for the Defense in the course of the interrogation became witnesses for the Prosecution. They were convicted by the "mute witnesses"—documents, mostly of German origin; they themselves were forced to expose those whom they intended to protect.

Another type of the means used by the Defense is legal arguments and considerations.

a) Some legal aspects of the Trial.

The accusation in the present Trial is based on an enormous quantity of irrefutable facts and is firmly established on the

principles of law and justice. Therefore, in the opening speeches for the Prosecution, so much attention has already been paid to the legal justification of the responsibility of the defendants.

In the speeches of the Defense a number of legal questions was again raised:

a) On the importance of the principle *Nullum crimen sine lege;*

b) on the importance of the order;

c) on the responsibility of the state and individuals;

d) on the concept of conspiracy.

I therefore consider it necessary to return again to some legal questions in order to answer the attempts of the Defense to confuse clear and simple statements and to change the legal argumentation into a kind of "smoke screen" in an effort to conceal from the Tribunal the gruesome reality of the fascist crimes.

a) Principle *Nullum crimen sine lege.*

The Defense attempted to deny the accusation by proving that at the time the defendants were perpetrating the offenses with which they were charged, the latter had not been foreseen by existing laws, and that therefore the defendants cannot bear criminal responsibility for them.

I could simply pass over the principle *Nullum crimen sine lege,* as the Charter of the International Military Tribunal, which is an immutable law and is unconditionally to be carried out, provides that this Tribunal "shall have the power to try and punish all persons, who acting in the interest of European Axis countries, whether as individuals or as members of organization or group," committed any of the crimes enumerated in Article 6 of the Charter.

Therefore, from the legal point of view, sentence can be pronounced and carried out without requiring that the deeds which incriminate the defendants be foreseen by the criminal law at the time of their perpetration. Nevertheless, there is no doubt that the deeds of the defendants, at the time when they were being committed, were actual criminal acts from the standpoint of the then existing criminal law.

The principles of criminal law contained in the Charter of the International Military Tribunal are the expression of the principles contained in a number of international agreements, enumerated in my opening statement of 8 February 1946 and in the criminal law of all civilized countries. The law of all civilized countries provides criminal responsibility for murder, torture, violence, plunder, *et cetera.* The fact that those crimes have been initiated by the defendants on a scale surpassing all human imagination and bear the marks of unheard-of sadistic cruelty does not, of course, exclude but rather increases the responsibility of the defendants. If the

defendants had committed the crimes on the territory and against the citizens of any one country, then in accordance with the declaration of the heads of the Governments of the U.S.S.R., of Great Britain and the United States of America, published on 2 November 1943, and in full agreement with the universally accepted principles of criminal law, they would be tried in that country and according to that country's laws.

This declaration set forth that "the German officers, soldiers, and members of the Nazi Party who were responsible for the aforementioned cruelties, murders and executions, or who voluntarily took part in them, would be deported to the countries where those gruesome crimes had been committed, in order to be tried and punished according to the law of those liberated countries and free governments which would be established there."

Nevertheless, the defendants are war criminals "whose offenses have no particular geographical location" (Article 1 of the Agreement of the Four Powers of 8 August 1945) and, therefore, the International Military Tribunal, acting in accordance with the Charter, is competent to try their crimes. The counsel for the Defendant Hess took the liberty to affirm that, "there can be no doubt that the Crimes against Peace, as they are stated in Article 6, Paragraph 2a, of the Charter, do not exist."

There is no need here to refer to the international agreements as I have already mentioned them in my opening statement on 8 February 1946, in which aggressive war was declared an international crime. Therefore the attempts of the defendants and their counsels to hide behind the principle *Nullum crimen sine lege* have failed. They are charged with deeds which civilized humanity had long ago recognized as criminal.

b) Execution of an order.

Some of the defendants, in their depositions before the Tribunal, attempted to present themselves as pitiful dwarfs, blind and obedient executors of another's will—the will of Hitler.

In his search for a legal basis for this assertion, counsel for the defense, Jahrreiss, spoke at great length about the importance of Hitler's orders. In the opinion of the counsel Jahrreiss, an order of Hitler's "was something quite different" from the order of any other leader, that a Hitler order was an act "legally immutable." Therefore, Professor Jahrreiss questions whether, whatever the Charter may mean by the orders which it rejects as a factor excluding criminal responsibility, it would be possible to adopt the same attitude toward an order of Hitler's. He asks: Could such an order be looked upon as an "order" within the meaning of the Charter?

The right to interpret law is the irrefutable right of every lawyer, including the counsels for the Defense. Nevertheless, it is quite incomprehensible what logical or other methods have led him to assert that the provisions of the Charter, specially drafted for the trial of major war criminals of fascist Germany, did not factually imply the very conditions themselves of the activities of these criminals. What orders then issued by whom and in what country are meant by the Charter of the Tribunal?

On the contrary it is indisputable that the authors of the Charter were fully aware of the specific conditions existing in Hitlerite Germany, were thoroughly familiar—from the material of the Kharkov and other trials—with the attempts of the defendants to hide behind Hitler's orders, and it is for this very reason that they made a special proviso to the effect that the execution of an obviously criminal order does not exonerate one from criminal responsibility.

c) Responsibility of countries and individuals.

We think that the very authors of this attempt to conceal a large group of ministers, Gauleiter, and military commanders behind Hitler's back doubted to a certain extent the efficacy of a similar defensive maneuver since a new line of defense was introduced to support the maneuver in question.

> "If the German Reich launched an attack in spite of a still-existent nonaggression pact"—said counsel Jahrreiss—"then Germany committed an international offense and must answer for it according to the principles of international law—the Reich alone, but not the individual person . . ."

We cannot help noticing that the above point of view is not exactly a brand new one: Even before the beginning of the official Defense at this Trial, certain unofficial advocates of war criminals propagated a version to the effect that it was the German Government and the German nation who were to bear responsibility for the criminal aggression and war crimes and not individual persons. When one who is subject to international law, that is the state, violates its principles, certain consequences of an international character are entailed, but in no case does it entail the criminal responsibility of the state. Any action on the part of the state in the sphere of international relations is committed by individual persons, by officials, and by the agents of that state. In carrying out such acts, these individuals may be guilty of the most varied offenses in violation of either the common or the criminal law. In the latter case, that is, when their individual criminal responsibility is involved, they have to bear this legal responsibility before the court, in conformity with the laws of their own country, as well as—if such is the case—in conformity with the laws and before the courts of a foreign state.

In the present case, not only did the Hitlerite State violate the principles of international law, as a result of which measures were taken against the states; but also some particular individuals, in committing those acts, have personally committed criminal offenses for which they bear the criminal responsibility in accordance with the Charter before the International Military Tribunal.

d) Concerning the concept of conspiracy.

The Defense Counsel is unanimous in trying, although in different forms and versions, to contest the charges of criminal conspiracy directed against the defendants. Extracting from various sources one-sided and tendentiously selected definitions of conspiracy, the Defense Counsel have endeavored to prove that Göring, Hess, Ribbentrop, and others cannot be considered as participants in the conspiracy. I should like to quote here several arguments proving the lack of basis for the statements of the Defense.

Conspiracy implies the existence of a criminal society created for and working toward the achievement of a common criminal purpose. Such a society undeniably existed. It stands to reason that in this case the threads and levers uniting the members of this conspiratory criminal society are extremely complicated, since the conspirators had seized the government of the state.

In any criminal society and particularly in a highly complicated society like this, individual participants commit criminal acts included in the general plan of the conspiracy but they can practically remain unknown to a number of the members of this society. Nevertheless, as these crimes result from a single criminal plan, common to the entire society, the participants who have not personally committed these separate criminal actions and were not practically informed of them, still bear the responsibility for them.

In this particular case the existence of the conspiracy is not precluded by the circumstance that, for instance, Schirach could be unaware of some of the measures of the slave trader Sauckel, or the "pogrom maker" Streicher; neither is the existence of the conspiracy precluded by the differences of opinion among individual participants in the conspiracy concerning particular questions, the intrigues of Göring against Bormann, *et cetera*. Such dissensions may occur in any gang of robbers and thieves, but the gang does not cease to exist on this account.

In nearly every society there exists a certain hierarchy among its members. Very often the head of a criminal gang usurps unlimited power over the other members, even the right of life and death, but it never occurred to any lawyer in the world to deny the existence of a criminal society merely because its participants were not equal among themselves and one of them had power over the others.

It is, at any rate, strange to deny the existence of the conspiracy in the present case because of the fact that enormous personal power was vested in the hands of the leader Hitler. In the same way the existence of the conspiracy does not preclude but, *per contra,* implies a definite distribution of the parts played by the participants of the criminal group in pursuance of the common criminal aim: One directs all the criminal activities, the other is in charge of questions of ideological training, the third prepares the army, the fourth organizes the war industry, the fifth carries on diplomatic preparations, *et cetera.* Therefore, the fascist conspiracy does not cease to be a conspiracy, but is one which presents special danger, since the entire machinery of the government and enormous resources of men and material are in the hands of the conspirators. In the hands of the international criminals, in the hands of Göring, Keitel, and the other defendants countless people became instruments of most grievous crimes. This is the reason why specific features which distinguish the conspirators of fascist Germany from any other gang only lend it a specially dangerous character without changing in any way the legal nature of the conspiracy. This completes the analysis of the legal arguments of the Defense, which were examined in detail by my honorable colleagues. As you have seen, Your Honors, the arguments of the Defense were found to be inconsistent and incapable of rebutting the charges. I shall now consider the question concerning the guilt of the individual defendants.

Göring.

In Hitlerite Germany the Defendant Göring was next in importance to Hitler himself, he stood next in the line of succession. He assumed enormous powers, and seized the most responsible posts. He was the president of the Ministerial Council for Defense of the Reich, he was the dictator of German economy—the Delegate for the Four Year Plan—and the Commander-in-Chief of the Air Force. The main point was that he utilized this extensive field and dedicated all his forces to the organization and perpetration of the crimes set out in the Indictment.

As we already know, the aim of this conspiracy consisted first of all in the conquest of Europe and then in the world supremacy of Hitlerite Germany, regardless of any methods, however criminal and inhuman. To realize this aim, the way had to be cleared since Hitler had already declared in February 1933 at a conference with prominent German industrialists that the parliamentary system must be destroyed.

Göring undertook this task. He began energetically to exterminate the political opponents of fascism, and for this purpose carried out mass arrests of members of political parties unfavorable

to Nazism. He organized concentration camps where he interned, without trial, all those who disagreed with fascism. He created the Gestapo which, from the day of its birth, established a regime of bloody terror. He demanded of all the officials, in the camps, and of the Gestapo to stop at nothing—and savage punishments of human beings, tortures and massacres became under his guidance fundamental procedures. It is he, Göring, who declared: "Every bullet fired from the pistol of a policeman is my bullet, and if anyone calls it murder, this means that I have committed murder..." (From Göring's book, *Aufbau einer Nation,* published by him in 1934). Thus he cleared the way for fascism and paved the path for the unhampered progress and the realization of the fascist conspiracy. Göring was tireless in his efforts to annihilate everybody and everything which hampered this conspiracy. And Hitler praised him for this. For example, on 13 July 1934 he declared to the Reichstag that Göring, "...with his iron fist smashed the attack against the National Socialist State before this attack could become effective."

All these terroristic activities of Göring were calculated to clear the way for the realization of the fundamental idea of the fascist conspiracy, that is, the conquest of Europe and, later, to achieve world supremacy of Hitlerite Germany. The legal proceedings have established Göring's guilt in the planning and preparation of all aggressive wars by Hitlerite Germany.

Numerous documents have been presented to the Tribunal, testifying to the active part played by Göring in launching aggressive wars. I shall remind you of Göring's declaration in 1935 at a meeting of Air Force officers. At that conference he declared that it was his intention "to create an air force which shall strike the enemy an avenging blow. Even before the attack, the enemy must feel that his cause is lost"; and this intention, as we know, he realized by preparing for war from day to day.

At the conference of the leaders of the German air industry on 8 July 1938 Göring hinted that war was near, and that if Germany emerged victorious from this war she would be the most powerful state in the world, dominating the world markets, and she would become a wealthy nation. "But one must risk, one must stake all." Such was the slogan which Göring coined on that occasion.

On 14 October 1938, not long before he presented demands to Czechoslovakia, Göring declared that he had begun to carry out a gigantic program in comparison with which all previous undertakings were insignificant.

> "In the shortest possible time, the Air Force must be increased fivefold; the Navy must be rearmed at a much greater speed, and the Army has to procure more speedily

large numbers of weapons of attack, especially heavy artillery and heavy tanks. This must be accompanied by the production of war materials and particularly explosives."

The active participation of Göring in the preparation for aggression against the U.S.S.R. has been established beyond all possible doubt. The Tribunal will find proof of Göring's active participation as far back as November 1940 in the development of a plan for the attack against the U.S.S.R., contained in the record of the conference of 29 April 1941 on the organization of the economic staff "Oldenburg" and in the minutes of the conference held on 23 February 1941 at the house of General Thomas, as well as in the testimony of Göring himself during the session of 21 March 1946.

It was Göring who, together with Rosenberg, Keitel and Bormann, at the conference with Hitler on 16 July 1941, gave concrete form to the plans for the dismemberment of the Soviet Union, the enslavement of her population and the despoliation of her riches. The plan to "... raze Leningrad to the ground and hand it over to the Finns" was conceived with his participation. It was he who recommended the hangman, Koch, for the post of Reich Commissioner for the Ukraine, as the "personality with the greatest initiative and the best training." Therefore, it can be considered that Göring's guilt in the planning and preparation of aggressive wars by Hitlerite Germany has been fully established, and for this he must bear responsibility.

My colleagues have already invited the attention of the Tribunal to the criminal treatment of prisoners of war. I shall just remind the Tribunal of the testimony given by the witness Maurice Lampe during the afternoon session of 25 January 1946 concerning the execution of Soviet, British, French, and other officers in Camp Mauthausen, in the extermination camps of Auschwitz and Maidanek; of the notes issued by the People's Commissar for Foreign Affairs of the U.S.S.R., Molotov, dated 25 November 1941 and 27 April 1942, presented to the Court in connection with the monstrous ill-treatment inflicted by the German military authorities on Soviet prisoners of war, for which Göring is personally greatly responsible. I would also remind you of the depositions of the witness Halder, on 31 October 1945, describing a conference held at Hitler's headquarters, on the nonapplication of the Hague Convention with respect to the treatment of Russian prisoners of war, and of the order issued from Hitler's headquarters on 12 May 1941 on the treatment of captured Russian commanding officers and political workers.

All these crimes, established beyond any doubt before the Court, need not be further clarified, since the Defense in their pleas were unable to advance any arguments in rebuttal.

In the "12 Commandments for the Behavior of the Germans in the East" of 1 June 1941, the sixth commandment reads as follows:

> "You must clearly understand that you for centuries to come are the representatives of Greater Germany and the standard bearers of National Socialism in the new Europe. You must, therefore, coolly carry out the most ruthless and the most cruel measures which will be demanded of you by the necessities of the State."

The beginning of the systematic persecution and extermination of the Jewish population is connected with the name of Göring. It was he who signed the odious Nuremberg Laws, the decrees for the expropriation of Jewish property, for the imposition on the Jews of a penalty of one billion, and other decrees; such activities were in full keeping with the whole of Göring's savage world outlook.

At the Trial Göring denied that he was an adherent of the racial theory, while in 1935 he made a speech before the Reichstag in defense of the Nuremberg racial instigators. On that occasion he loudly declared: "God has created races. He did not will equality and for this reason we reject energetically every attempt to pervert the idea of race purity . . ."

Numerous documents presented to the Court by the Prosecution expose the criminal actions of Göring in respect to other nations. Göring's order issued on 19 October 1939 clearly demonstrated the attitude of the defendant toward the Polish people and the Polish State. In an order relating to the economic policy in the East, issued on 23 May 1941 just before the attack on the U.S.S.R., Göring wrote as follows on the attitude toward the Russians:

> "Germany is not interested in maintaining productivity in this territory. She will supply only the troops stationed there . . . The population in those regions, and especially the urban population, is doomed to starvation. It will be necessary to deport this population to Siberia."

In his capacity of Delegate for the Four Year Plan Göring is responsible for the plunder and spoliation of state property and personal property of the citizens, carried out by the Nazis in the occupied territories of the U.S.S.R., in Czechoslovakia, Poland, Yugoslavia, and other countries. It was precisely Göring who headed the activities of the Nazi conspirators directed toward the economic plunder of the occupied territories of the U.S.S.R.

A conference in connection with the elaboration of economic measures according to Case Barbarossa was held on 29 April 1941 prior to the treacherous attack against the U.S.S.R. As a result of this conference there was created a special economic staff "Oldenburg" which was subordinated to Göring. The creation of special economic inspectorates and units in the largest centers of the

U.S.S.R. was planned; they were to handle important tasks for the exploitation and plunder of Soviet industry and agriculture.

The file of a district agricultural leader contained instructions to agricultural officials who were given full freedom in the choice of methods for the achievement of their criminal purposes. The demand for ruthless treatment of the Soviet peoples, the Russians, the Ukrainians and the Byelorussians, was expressly put forward. The report of the U.S.S.R. Extraordinary State Commission on the crimes committed by the Hitlerites in Kiev, in the region of Stalino and other places, states that these criminal plans of the Defendant Göring and his accomplices were for the greater part realized.

To secure the necessary manpower for the German war industry and agriculture, and at the same time for the purpose of the physical extermination and economic weakening of the enslaved peoples, the Defendant Göring and his accomplices in the Nazi conspiracy exploited the foreign workers as slaves. The exploitation of forced labor had been planned by the Nazis even before the war. It is sufficient to remind you of the conference at Hitler's headquarters which took place on 23 May 1939 and in which the Defendant Göring also participated. At the conference of 7 November 1941 and in his order issued on 10 January 1942 Göring demanded of all the departments subordinated to him the necessary manpower for the German industries at the expense of the population of the occupied Soviet territories.

On 6 August 1942 Göring held a conference with the Reich Commissioners for the occupied territories and the representatives of the High Command. Addressing himself to the participants in this conference, Göring said:

> "You are being sent there not to work for the well-being of the peoples entrusted to you, but for the purpose of extracting everything available.... You must be like bloodhounds, wherever there is still something left.... I intend to plunder and to do it efficiently...."

These intentions were carried out. Göring plundered, the Reich Ministers and Reich Commissioners for the occupied territories plundered, the representatives of the High Command, from the generals to the ordinary soldiers, also plundered. Such were the activities of Defendant Göring.

There is not a single measure executed by the fascist party, not a single step taken by the Hitlerite Government in which Göring did not participate. He participated actively in all the crimes of the fascist gang and for all his deeds he must be duly punished.

Hess.

The Defendant Rudolf Hess occupied a leading position among the Nazi conspirators from the very beginnings of the fascist state.

It was Hess who had been the leader of the fascist organization of the University of Munich. It was he who had participated in the Munich Putsch. It was he who, together with Hitler, had worked at the fascist bible *Mein Kampf,* assuming the duties of Hitler's private secretary. It was he who had been president of the Central Political Commission of the fascist party, and it was he who had carried into effect the bestial policy of the fascist cutthroats as Deputy of the Führer after the seizure of power. It was precisely Hess to whom, according to Hitler's decree of 21 April 1933, "full rights were granted to take decisions on Hitler's behalf in all questions concerning the leadership of the Party."

Immediately afterward Hess continued to seize one new post after the other in Hitler's Government. As from 1 December 1933 he was Reich Minister without Portfolio "to insure close collaboration of the Party and the SA with the civil authorities"; on 4 February 1938 he was appointed member of the Secret Council; on 30 August 1939, member of the Reich Defense Council; and on 1 September 1939 Hitler declared Hess his successor after Göring. Hess was also appointed Obergruppenführer SS and SA.

By a decree of 27 July 1934 Hitler compelled the leaders of all the departments and ministries in Germany to present all drafts of laws to Hess for preliminary approval. Hess had to select and allocate the leading staff of the fascist cadres. This is proved by Hitler's decree of 24 September 1935 and by other documents submitted to the Tribunal by the Prosecution.

Special note should be taken of the active part played by Hess in planning and carrying out aggressive wars. All the aggressive actions of Hitler's Germany had been planned and prepared with the direct assistance of Hess and the Party machinery of the Nazis subordinated to him. Already on 12 October 1936, in his speeches in Bavaria, Hess appealed to the Germans:

> "... at times to use a little less fat, a little less pork, fewer eggs.... We know"—said Hess—"that the foreign currency that is saved in this way goes for armaments. And the slogan of the day is: 'Cannons instead of butter.' "

Hess spoke about this on the eve of his flight to England on 1 May 1941, speaking at the Messerschmitt factory where he made an appeal for the continuation of the aggressive war.

Together with Hitler, Göring, and other leaders of the Nazi conspiracy, Hess signed the decrees concerning the annexation of the territories seized by the Germans.

The man-hating Nuremberg Laws, for the publishing of which this defendant is also responsible, contain a special proviso authorizing Frick and Hess to issue the necessary decrees for carrying these laws into effect. Hess signed the law on the "Protection of

Race and Honor," the decree of 14 September 1935, depriving the Jews of their right to vote and of their right to employment in government offices; and also the decree of 20 May 1938 extending the Nuremberg Laws to Austria. The question of the part played by Hess in organizing a network for espionage and terroristic units abroad, as well as in creating the SD (Security Service) and in the recruitment of SS units, has been sufficiently elucidated at this Trial.

The very position occupied by Hess in the fascist party and Hitler's Government shows the active and leading participation of the defendant in the preparation and realization of the common criminal plan of the fascist conspirators, and consequently the enormous share of his guilt and responsibility for the crimes against peace, for the war crimes and the crimes against humanity.

Your Honors, in order to evaluate more correctly the importance of the criminal activity of the Defendant Hess as one of the most notorious leaders of the Nazi Party and Hitler's Government, I shall remind you of the article in the newspaper *Nationalzeitung* of 24 April 1941, dedicated to Hess.

> "Many years ago—it was before the beginning of this war—Rudolf Hess was called the 'Conscience of the Party.' It is not difficult to answer the question why this honorable name was given to the Führer's Deputy. There is not an event in our public life that is not connected with the name of the Deputy Führer. He is so versatile and original in his work and in his sphere of activity, that they cannot be described in a few words . . . many measures carried out by the Government, especially in the field of war economy and in the Party, which at their publication are so readily welcomed by the public because they answer to a high degree the real feeling of the people, originate in the personal initiative of the Deputy of the Führer."

Hess refused to offer explanations to the Tribunal. His counsel, Seidl, declared with false pathos that Hess considered the present Tribunal incompetent to judge the German war criminals, and immediately afterward, without a pause, he presented proofs in his defense. Hess even tried to declare himself insane to avoid punishment deserved. But when he was convinced that such a maneuver would not help him, he was forced to tell the Tribunal that he had simulated loss of memory, that it had been a trick on his part, and he had to admit that he bore full responsibility for all that he had done and signed together with the others.

Thus, this clumsy attempt of Hess to avoid responsibility was fully exposed at the Trial and he should suffer the full extent of

his punishment for his participation in the Common Plan or Conspiracy for committing crimes against peace, war crimes and the most grievous crimes against the world and humanity, crimes perpetrated by him together with the other defendants.

Bormann.

The name of Martin Bormann is closely connected with the creation of Hitler's regime. He was one of those who committed the most outrageous crimes, directed at the annihilation of many hundreds of thousands. Together with the Defendant Rosenberg, Bormann carried on with cruel perseverance a propaganda of racial theories together with the persecutions of the Jews. He issued numerous instructions aiming at discrimination against the Jews in Hitler's Germany, which discrimination later on had such fatal effects and resulted in the annihilation of millions of Jews. By this activity he won Hitler's confidence. He was "authorized to represent the Party in the sphere of government activities" *(Verordnungen und Befehle der Parteikanzlei,* Volume II, Page 228) and did so. Thus, as chief of the Party Chancellery, he directly participated in the annihilation of Jews, Gypsies, Russians, Ukrainians, Poles, and Czechoslovaks.

Under his leadership the NSDAP became a police organization, closely co-operating with the German Secret Police and the SS. Bormann not only knew of all the aggressive plans of Hitler's Government but he also took an active part in their realization. He made full use of the entire Party machinery of the NSDAP to realize the aggressive plans of Hitler's Government, and he appointed the Party Gauleiter Reich Defense Commissioners in the regions where they operated.

The NSDAP Party machinery and Bormann personally participated actively in all measures taken by the German military and civil authorities for the inhuman exploitation of prisoners of war. This is proved by the numerous instructions and directives issued by Bormann. The evidence of the Prosecution and the legal proceedings have now established the extent of mass annihilation resulting from the savage ill-treatment of the prisoners of war.

The Party machinery and the Defendant Bormann personally participated directly in the measures adopted by Hitler's Government in connection with the deportation of the peoples of the occupied territories for slave labor. The secret deportation of Ukrainian girls to Germany for enforced Germanization was carried out with Bormann's approval. By Hitler's order of 18 October 1944, Bormann and Himmler were entrusted with the leadership of the Volkssturm, consisting of all men from 16 to 60 years of age, capable of carrying arms. On the eve of the collapse of Hitler's Germany,

Bormann headed the Werewolf underground organization for diversion and subversive activities behind the Allied lines. Bormann participated directly in the plunder of historical and cultural treasures and works of art in the occupied territories. In 1943 he made suggestions for the intensification of the economic plunder in the occupied territories.

Such are the crimes of the Defendant Bormann, Hitler's closest collaborator, sharing the full responsibility for the numerous crimes of Hitler's Government and the Nazi Party.

Ribbentrop.

Joachim von Ribbentrop was not only one of the principal instigators and leaders of the foreign policy of Hitlerite Germany, but he was also one of the most active participants in the criminal conspiracy. Having officially entered the Nazi Party in 1932, the defendant, however, contributed actively to the seizure of power by the Nazis long before this actually occurred, and he rapidly became the official adviser of the Party, inasmuch as he was the "collaborator of the Führer on matters of foreign policy."

Ribbentrop's promotion is indissolubly connected with the development of the activities of the Nazi conspirators, activities directed against the interests of peace. In his testimony Ribbentrop declared: "He (Hitler) knew that I was his loyal collaborator." That is why on 4 February 1938 Hitler appointed the convinced and faithful Nazi, Ribbentrop, as official leader of foreign policy, a post which was one of the most important forces in the realization of the entire Nazi conspiracy.

Ribbentrop, however, did not limit his activities to the scope of foreign policy. As member of the Hitlerite Government, the Reich Defense Council, and the Secret Council, he participated in the solution of all the innumerable problems connected with the preparation of aggressive wars. That is why he, Ribbentrop, although he was Minister for Foreign Affairs, participated in the solution and realization of problems only faintly relevant to foreign policy, such as the exploitation of manpower in wartime, the organization of the concentration camps, and so forth. In this connection it should be noted that Ribbentrop signed a special, far-reaching agreement with Himmler on the organization of joint intelligence service.

Ribbentrop became Reich Foreign Minister exactly at the beginning of the realization of the plans of aggression, which counted on the submission of Europe to Germany. This coincidence is no accident. Ribbentrop was considered, not without reason, as the most qualified person for the realization of this criminal conspiracy. He was preferred even to such an expert on international provocation as Rosenberg, which induced the latter to lodge an official

complaint, not without reason. And Hitler was not mistaken in his choice, for Ribbentrop fully justified his confidence.

As early as 12 February 1938, a week after his appointment, Ribbentrop together with Hitler and the Defendant Papen, who for a long time before this date had been directing the diversionist activities of the Nazi agents in Austria, participated in a conference at the Obersalzberg. At this meeting he addressed an ultimatum, punctuated by threats, to the Austrian Federal Chancellor Schuschnigg and the latter's Foreign Minister, Schmidt, demanding their agreement to the sacrifice of Austria's independence and this object was attained.

As Minister, Ribbentrop was present at the conference of 28 May 1938, during which a decision was made for the execution of Case Green—the plan for aggression against Czechoslovakia. In conformity with the Nazi tactics of weakening their future victim from inside, Ribbentrop constantly kept a close contact with and gave material assistance first to the German Sudeten Party, and then to the Slovak National Socialists, with the object of attaining an internal split and fratricidal war in Czechoslovakia.

Having seized Czechoslovakia, the Nazi conspirators, and Ribbentrop among them, began to prepare for the next aggressive act, which had already been outlined by them in their criminal plan against peace—the attack on Poland.

Being forced by reason of the recently realized annexation of Austria and Czechoslovakia to temporarily conceal Germany's further intentions, Ribbentrop personally and through his agents and his diplomats endeavored to allay the vigilance of the European states by hypocritical declarations to the effect that Germany had no further territorial demands.

On 26 January 1939, in Warsaw, the Foreign Minister of fascist Germany, Ribbentrop, declared:

> "... that the consolidation of friendly relations between Germany and Poland on the basis of our agreement constituted the most important factor of Germany's foreign policy."

A very short time elapsed and Poland experienced the full value of these assurances of Ribbentrop.

I will not dwell here on the perfidious part played by the Defendant Ribbentrop in the German aggression against Denmark, Norway, Belgium, Holland, and Luxembourg, for my colleagues have already dealt with this matter convincingly enough. The Defendant Ribbentrop personally and actively participated in carrying out the aggression against Yugoslavia and Greece.

Reverting to his favorite method of giving false guarantees in order to conceal future aggressions, Defendant Ribbentrop assured

Yugoslavia, on 20 April 1938, that after the Anschluss Germany's frontiers with Yugoslavia were considered both "final and unalterable."

At the same time manifold preparations for aggression were carried out with the assistance of the Defendant Ribbentrop. On 12 and 13 August 1939, at the conferences held by Hitler and Ribbentrop with Ciano on the Obersalzberg, an agreement was reached concerning the liquidation of the neutrals one by one.

With the direct and immediate assistance of the Defendant Ribbentrop, the Nazi conspirators planned, prepared, and executed the treacherous attack on the U.S.S.R. of 22 June 1941.

The Defendant Ribbentrop himself admitted in the courtroom, that at the end of August and the beginning of September 1940, that is, at the time when the work on Case Barbarossa was being carried out—as is evident from the depositions of General Warlimont, General Müller and Field Marshal Paulus—the Defendant Keitel was discussing with him the question of attacking the U.S.S.R. The activities of the defendant, and the Ministry directed by him, played a primary part in the organization of war against the U.S.S.R. with the participation of Finland, Hungary, Romania, and Bulgaria.

After the beginning of the aggression of Germany against the Soviet Union, the Defendant Ribbentrop continued to apply his efforts to lure new accomplices to the side of Germany. Thus in a telegram to the German Ambassador in Tokio on 10 June 1941 he said:

> "I beg you to try all the means at your disposal to influence Matsuoka in order to force Japan to enter into war with Russia as soon as possible. The sooner, the better. The aim, of course, should be that Japan and Germany shake hands on the Siberian railway before winter comes . . ."

As has been established at the Trial, Ribbentrop, together with the other defendants, was preparing a policy of extermination and plunder, planned by the Hitlerites and then carried out in the temporarily occupied territories of the Soviet Union. The Defendant Rosenberg, who was elaborating the plans for the exploitation of the occupied territories in eastern Europe, held a conference on this question with the OKW, the Ministry of Economics, the Ministry of the Interior, and the Ministry of Foreign Affairs. In his "Report on Preparatory Work on the Eastern European Questions" he wrote: "As a result of negotiations with the Ministry of Foreign Affairs, the latter appointed Consul General Bräutigam as their representative to Rosenberg."

It is therefore indisputable that Ribbentrop not only knew about the preparations for the military attack on the U.S.S.R., but that he, together with the other conspirators, had planned beforehand the

colonization of the territory of the Soviet Union and the enslavement of the Soviet citizens.

The defendant was compelled to admit that he had known of the notes issued by the People's Commissar for Foreign Affairs V. M. Molotov concerning the atrocities of the Hitlerites in the temporarily occupied territories of the Soviet Union. He, as well as the other conspirators, had also known the other declarations of the chiefs of the Allied Governments concerning the responsibility imposed upon the Nazi Government for the perpetration of the monstrous atrocities by the Hitlerites in the occupied countries.

Ribbentrop, as the witness for the Defense, Steengracht, former Secretary of State at the Ministry for Foreign Affairs has confirmed, had been one of the initial organizers and was to be appointed honorary member of the International Anti-Jewish Congress which the Germans hoped to convene in July 1944, in Kraków.

Ribbentrop himself admitted at the Trial that he had negotiated with the governments of European countries concerning the banishment of the Jews.

According to the record of Ribbentrop's conversation with Horthy: "The Minister of Foreign Affairs declared to Horthy that the Jews should either be exterminated or sent to concentration camps. There can be no other decision."

This statement amply confirms the fact that Ribbentrop was aware of the existence of the concentration camps although he tried hard to prove the reverse here. Ribbentrop lent his support to other Nazi leaders and above all to the Defendant Sauckel in deporting the population of the occupied countries for forced labor in Germany. Moreover, the Defendant Ribbentrop when carrying out the common plan of conspiracy which included the destruction of the national culture of the peoples of the occupied territories, took a most active part in plundering cultural treasures which are the common property of all nations.

To carry out this task, a "Special Service Battalion" had been created on Ribbentrop's instructions at the Ministry of Foreign Affairs which, during the entire war, followed the advance units, requisitioned, and deported to Germany all kinds of cultural treasures from the occupied territories in the East, in accordance with Ribbentrop's directions.

Thus the Defendant Ribbentrop had participated in the seizure of power by the Nazis, playing a leading role in planning, preparing, and waging aggressive and predatory wars; together with the other conspirators he participated, in pursuance of the fascist plans, in the leadership, committing most grievous crimes against the nations

whose territories had been temporarily occupied by the Hitlerite invaders.

The military group.

Several of the defendants in the dock at this Trial of the major war criminals may be said to form a military group. Excluding Göring—who is quite a peculiar figure, uniting in his person the politician, administrator, and soldier—there remain Keitel, Jodl, Dönitz and Raeder. In the course of these proceedings not only have all the Counts of the Indictment against them been sustained, but even more incriminating evidence has been brought to light.

The documentary evidence, the testimony of witnesses, including those called by the Defense, helped tip the scales in favor of the Prosecution.

The Defense Counsel tried to convince the Tribunal that their clients were the pawns of destiny, involved in this sinister tragedy in spite of themselves.

The defendants—Keitel, Jodl, Dönitz, and Raeder endeavor to appear in the role of noble-minded simpletons. To do the Defense justice, they did the best they could to help them in this attempt.

We have heard a great deal about the honor of the soldier—of military discipline, fidelity to duty and oaths of allegiance—and the consequent obligation to fulfill Hitler's orders, even those which in their hearts aroused both doubt and direct protest. Such a presentation of their position completely distorts the actual state of affairs. Before passing to the question of the guilt of Keitel, Jodl, Dönitz, and Raeder, I consider it necessary to ask the following four questions:

1) Did these defendants know that Hitlerite Germany, in violation of her international obligations, had prepared a series of aggressive and predatory wars?
2) Did they take an active part in the planning, preparing, launching and waging of these wars?
3) Are they guilty of cynically trampling on the laws and customs of warfare?
4) Are they responsible for the atrocities and for the extermination of the peaceful population, for the sinking of passenger and hospital ships, for the towns and villages destroyed by the military machine of the Hitlerite Reich?

It seems to me that after this investigation which has so carefully gone into all the details of this case it would be impossible, unless we remain blind to the facts, to give any but an affirmative answer to these questions.

The evidence submitted to the Tribunal has fully proved that the military group of criminals is guilty of the most appalling crimes

and that they have actively participated in the planning and execution of the common criminal conspiracy.

The very fact that these crimes were committed by men in uniform not only does not mitigate their responsibility, it seems to me, but on the contrary, merely serves to heighten it.

How can they attempt to whitewash themselves by referring to the "duty of a soldier," "the honor of an officer," and the "obligation of fulfilling orders"? Since when has "the duty of a soldier" and "the honor of an officer" been compatible with shooting prisoners without trial or exterminating women, children, and old people?

The only true and correct explanation of the amazing fact that these generals and admirals did commit what, in effect, were ignoble crimes, lies in the fact that they were actually generals and admirals of Hitler's making. These are men of a special brand. They are fascists in military uniform bound in body and soul to the Nazi regime. This is the only reason why Hitler gathered these men around him and collaborated with them for so long a period of time. This is the only way to explain why they collaborated with Hitler in perpetrating crimes unprecedented in history. They fitted together and understood one another to perfection.

Keitel.

It is only natural that, when speaking of the military group, I begin with Defendant Keitel. Keitel held the leading post in Hitler's military machine from the very first years of its conception. Keitel's counsel admits that "the decree"—of 4 February 1938—"gave Keitel the marvelous title: 'Chief of the High Command of the Armed Forces.'" Further he goes on to say:

> "... the factual significance of Keitel's activities ... was immense ... It was an extremely ungrateful job and its miserly remuneration was a brilliant position in the immediate proximity to the head of the State."

In the light of all subsequent events it may be taken for granted that the primary stage of all the future wars of aggression included everything connected with the secret rearmament of Germany after the Versailles Treaty.

It is difficult to minimize the significance of all that was done at the time by the then Colonel Keitel in the committee of experts which painstakingly and consecutively sought and found means of circumventing and even violating the treaty.

It was none other than Keitel in particular who gave instructions to the effect that in Geneva it was possible to say what one pleased, but care must be taken not to leave anything behind on paper. This cynical statement fully tallies with the role played

by Keitel in the subsequent preparation and waging of aggressive wars. During the negotiations between Hitler and Schuschnigg, Keitel in person was the living reminder of Germany's preparedness to resort to arms. Keitel issued orders for troops to cross into Czechoslovakia at the time when President Hacha was so treacherously called to Berlin "for continuing negotiations." It was the OKW, and none other, which was fully prepared through the Department of the Abwehr to provoke an incident with Czechoslovakia in order to justify the invasion by the German hordes, ready to fall upon Czechoslovakia. In his strictly confidential memorandum Keitel demanded that Hess and Himmler advise the OKW in advance of all measures taken by Party organizations or Police which were not included in Case Green.

The declarations alleging that after the seizure of Czechoslovakia Germany had no more territorial aspirations in Europe were downright lies. This seizure was but a link in the chain of aggressive wars.

I wish to emphasize the leading role of the OKW in the preparation and carrying out of aggression. The directive regarding the waging of war and the invasion of Poland is known to us as Keitel's and Hitler's directive of 10 May 1939. It was forwarded to the High Command of the Air Force, Navy, and Army. How is it possible, after this, to maintain that the OKW was not the driving power behind all the branches of the Armed Forces of the fascist Reich?

If we once more peruse the documents pertaining to German aggression against Norway, Denmark, Belgium, Holland, Luxembourg, Yugoslavia, and Greece, we will again come across the name of Keitel. He appears either as a participant in the most important events, or as the author of secret orders addressed to Raeder, Göring and the General Staff. We find the initials of Keitel and Jodl entered in their own hand on the secret directive signed by Hitler regarding "Operation Marita."

Much has been said here of Case Barbarossa and its authors. At present it is important to stress that this document took shape in the innermost depths of the OKW, and on its initiative, and that the methods planned prior to a treacherous attack on the U.S.S.R. were likewise the work of the OKW. The significance of a military specialist's visa on a document is clear to everybody.

Some of the defendants in their untruthfulness attempted to portray the attack on the U.S.S.R. as a preventive war. This contention is to such a degree unconvincing and contradictory to the irrefutable evidence presented in court—German documents—that I see no need for wasting the Tribunal's time.

Keitel's counsel stated that his defense is based on the point of view that Keitel "is fighting not for his head but to save his face."

I should like to help the Tribunal to unveil Keitel's true face. For this I should have to remind you of a number of Keitel's directives which may well lay claim to being among the foremost of all the infamous documents pointing to the barbarity of the German military clique, to its baseness and foul and unlimited contempt for every concept of the rules and customs of warfare.

Let us consider the documents dealing with the shooting of political officers. Keitel, the soldier, as he likes to call himself, ignoring his oath, shamelessly lied to the representatives of the American Prosecution at the preliminary investigation by avowing that, to begin with, this order was in the nature of a reprisal and that the political officers were separated from the other prisoners of war at the request of the prisoners of war themselves. At the Trial he was unmasked. Exhibit Number USSR-351, Document Number 884-PS proved that this directive had been issued before the war had broken out. We also submitted a document under Document Number USSR-62, the text of a letter from German prisoners of war. This document makes it clear that even before the attack on the U.S.S.R. the armies in the field had been instructed absolutely to exterminate Soviet women in military service as well as political officers.

And what can be said of the following statement, appalling in its boundless cynicism: "... human life in the countries concerned is not of value at all ... a terrifying influence can only be achieved by unheard-of brutality." And what can we say of the directive of 13 May 1941 introducing courts-martial in the "Barbarossa" region? And of the order of 16 October 1941 calling for the execution of 80 to 100 Communists for each German killed? What could Keitel say about the document known as "Nacht und Nebel"?

These are documents stained in blood. No one can compute how many thousands of prisoners of war, soldiers and officers of the Red Army, had been killed and tortured to death in the camps of fascist Germany. You remember how on 21 January 1946 at the afternoon session the witness Lampe testified that for Himmler's amusement the shooting of 50 Soviet officers was organized in Mauthausen Camp. You remember the witness Blaha testifying that in the spring of 1944, 94 Soviet senior military officers were tortured and then killed for refusing to impart military information. I should like to mention the testimony of the SS man, Paul Waldmann, regarding the slaughter of 840 Russian prisoners of war. You remember the testimony of the witness Kivelisha regarding the endless chain of scoffing and suffering to which all Russians captured by the Germans were subjected?

It is impossible to overlook Keitel's directive calling for the branding of Soviet prisoners of war. One cannot forget the Keitel directive of 16 December 1942. It is entitled "Measures to be adopted

against bands." Under the word "bands" Defendant Keitel understood any resistance movement and demanded that his troops revert to harshest methods, stopping at nothing, even with regard to women and children.

The Soviet Prosecution submitted Le Court's testimony as Document Number USSR-162. Le Court states that he shot and burned Soviet citizens and razed their houses. He alone had shot over 1,200 persons and for this achievement was prematurely promoted to the rank of Obergefreiter and awarded the medal for service in the East. He acted in accordance with Keitel's directives.

The directive of Keitel's instituting courts-martial in the "Barbarossa" region freed such persons of all responsibility for their crimes. Keitel's hands are stained with the blood of the victims of Le Court and his kind. It was in carrying out Keitel's directive to the effect that "life in the eastern regions was of no value at all," that the soldiers and officers of Hitlerite Germany committed their atrocities.

Document Number USSR-51, submitted by the Prosecution, shows how, on 28 August 1941, attacking German troops drove a group of women, children, and old men in front of their combat units. In the village of Kolpino the fascists forced the peasants to dig trenches and build bridges for them. Then they shot all the peasants.

In Yugoslavia the mass shooting of hostages was a daily practice of the Armed Forces and military administration. In a secret report of 15 February 1940, addressed to Göring, the OKW justifies the practice of seizing hostages.

I wish to conclude with Exhibit Number USSR-356, Document Number EC-338, which Your Honors will, of course, remember. In this document Admiral Canaris informs Keitel of the club law prevalent in the prisoner-of-war camps, of the hunger, and of the mass shootings of Soviet prisoners of war. Even that hardened fascist spy, Canaris, fearing eventual responsibility, could not ignore a cruelty which cried to High Heaven and a flagrant violation of all accepted laws and customs of warfare.

You will remember Keitel's note on this report: "I approve and support these measures."

On 7 April 1946 in the course of the cross-examination, I put the following question to Keitel:

> "You, Defendant Keitel, called a Field Marshal, repeatedly referred to yourself as a soldier before this Tribunal, and you, by your bloodthirsty resolution of September 1941 approved and sanctioned the murder, in cold blood, of thousands of unarmed captured soldiers. Do you confirm this?"

Keitel was forced to admit this fact.

This resolution alone unveils the true, the authentic face of Field Marshal Keitel. The highly involved arguments of the defense cannot absolve him of his responsibility for the bloodshed and for the innumerable human lives cut short by the fascist military clique acting on orders and directives signed by Keitel's hand.

THE PRESIDENT: The Tribunal will recess now.

[A recess was taken.]

GENERAL RUDENKO: Jodl.

The Defendant Alfred Jodl shares equal responsibility with Defendant Keitel as his assistant and as Hitler's closest military adviser. Everything connected with the preparation and execution of the aggressive plans of Hitlerite Germany is inseparably linked to the name of Jodl, as well as to Keitel's. There is no need to repeat all the aggressive acts of Hitler's Germany which had been individually planned and executed with the direct connivance of Defendant Jodl. They are already facts of common knowledge.

As the representative of the Union of Soviet Socialist Republics, I should like to emphasize once again that the criminal plan for the perfidious attack on the Soviet Union, coded by the Hitler clique under the name of the ill-fated conqueror, Friedrich Barbarossa, is signed not only by Hitler and Keitel, but by Jodl as well. But this is more than a mere signature.

As far back as the summer of 1940, in Reichenhall, Jodl held the first conference with his staff officers at which the question of a possible attack by Hitler Germany on Soviet Russia was discussed. It was the Defendant Jodl alone who, even before the attack against the U.S.S.R., issued his well-known "Instructions on the Use of Propaganda in the 'Barbarossa' Region." In these instructions it is definitely stated that "propaganda directed at the partition of the Soviet Union should not, as yet, be carried out."

Thus, Defendant Jodl knew beforehand of the actual aims of Germany's attack on the U.S.S.R. and knew of the predatory, violent nature of a war which called for the dismemberment of the Soviet Union. It was Jodl who participated in the preparation and organization of a provocative incident staged on the Czechoslovak border intended to justify the aggressive act of Hitler's Germany against this peace-loving nation. It was Jodl who signed the directive of 28 September 1938 regarding the order in which the so-called Henlein Corps was to be used should Case Green be realized. How full of derision are the words of the Defendant Jodl about the "honor of the soldier" when we read his order for the destruction of Leningrad,

Moscow, and other cities of the Soviet Union. It was this selfsame Jodl who with inimitable cynicism declared at a conference with Hitler on 1 December 1941 that German troops could with impunity "hang by the feet and quarter" the Soviet patriots.

As Hitler's closest military adviser, who had personally participated in the preparation and execution of all the bloodthirsty and aggressive plans of Hitlerite Germany, Defendant Jodl has been justly included in the ranks of the major German war criminals.

Dönitz and Raeder.

My British colleague has proved the guilt of Defendants Karl Dönitz and Erich Raeder so convincingly and thoroughly that I see no need to dwell particularly on these Grossadmirale of Hitlerite Germany, who have stained their admirals' uniforms by such infamous crimes.

In the course of his cross-examination Dönitz told the Soviet prosecutor that he was unaware of the reasons for which Hitler had appointed him as his successor. I do not believe that Dönitz was quite sincere in making this statement. One has only to refer to the transcripts of the sessions of 8 May in order to understand without any confession on his part why he became Hitler's successor when the Hitlerite Reich collapsed to the ground. The important point is not the fact that an admiral was needed at a moment like this, but the fact that in the opinion of Hitler, who so soon was to fade from the picture, only the Nazi Grossadmiral Dönitz could do anything to save the sinking ship.

Under Hitler Dönitz commanded the submarine arm of the German Reich. We know the role which the German U-boats played in this war. In this connection it is worth emphasizing that Dönitz prided himself on being the author of the so-called "wolf-pack tactics." The people of the Soviet have not forgotten how Dönitz' submarines, in the Baltic and Black Seas, sank both hospital ships and steamers evacuating peaceful citizens—women and children.

The last head of the Hitlerite Government should also be one of the first to pay the penalty for all those crimes which have led to the trial of the major war criminals before the International Military Tribunal.

The name of Raeder is linked to the impious directive for the destruction of Leningrad. At the Trial Raeder tried to act the part of an "honest soldier." But the mere fact that it was he, together with Hitler and Keitel, who conspired to "wipe Leningrad off the face of the earth" and to exterminate more than 3 million of the population of that great city, whose very name is indissolubly connected with the development of the culture and history of mankind, makes Raeder one of the major war criminals.

Raeder participated in drafting all the most important plans of aggression of German fascism. This participant in the criminal fascist conspiracy must, therefore, bear the punishment meted out to his associates.

Kaltenbrunner.

The Defendant Ernst Kaltenbrunner was considered by Himmler as the most deserving successor to that hangman, Heydrich, executed by Czech patriots. On 30 January 1943, he was appointed head of the Reich Security Main Office and chief of the SD.

Numerous documents and especially directives signed by Kaltenbrunner for the mass deportation of people to the concentration camps, the testimonies of his subordinates, including the depositions of Walter Schellenberg, former chief of foreign intelligence (Amt VI), and of Otto Ohlendorf, chief of the security within Germany (Amt III or SD), fully convict Kaltenbrunner of the most heinous crimes.

At the session of 12 April 1946, in the course of Kaltenbrunner's examination, the testimonies of Johann Kandutor, ex-prisoner of Mauthausen, were read into the record. In his depositions Kandutor described as follows the manner in which Kaltenbrunner passed his time on one of his visits to the camp:

> "Laughing, Kaltenbrunner entered the gas chamber; then the prisoners were led from the barracks to execution and all three methods of execution were demonstrated—hanging, shooting in the neck, and gassing."

I shall not dwell upon the numerous proofs available, since they have been sufficiently clarified before the Tribunal. There is only one point of the accusation against Kaltenbrunner on which I consider it necessary to dwell.

Together with the other RSHA organizations, Kaltenbrunner took over from Heydrich five Einsatzgruppen. The citizens of the Soviet Union well remember these cruel organizations of German fascism, headed by Kaltenbrunner. Einsatzgruppe A reached the approaches to Leningrad. It created the "Fort of Death Number 9" near Kaunas and the secret center for the mass extermination of human beings in Panarai; it carried out executions by shooting in the woods of Salaspilsk and Bikerneksk near Riga; it erected gallows in the parks of Pushkino one of Leningrad's suburbs.

Einsatzgruppe B settled down in the vicinity of Smolensk. It burned alive the peasants of Byelorussia; it shot down the victims of the awful Pinsk action; it drowned thousands of Byelorussian women and children in the Masurian Lakes; it operated with "murder vans" in Minsk; it liquidated the ghetto in the Verchnye Sadka district of Smolensk.

Einsatzgruppe C was billeted in Kiev. This group carried out the mass action in Babij Jar near Kiev, an execution unmatched in cruelty, when 100,000 Soviet citizens perished on a single day.

Einsatzgruppe D operated in the southern regions of the temporarily occupied territories of the Soviet Union. This group was the first to experiment with the "murder vans" on Soviet citizens in the district of Stavropol and in Krasnodar.

And when Kaltenbrunner's fate will be decided, all the victims asphyxiated in the "murder vans" near Stavropol, buried alive in the graves near Kiev and Riga, burnt alive in the Byelorussian villages, must never be forgotten. All these innocent victims are on his unclean conscience.

Successor to a hangman, and himself a hangman, Kaltenbrunner carried out the most revolting function in the common criminal plan of the Hitlerite clique.

Rosenberg.

I shall now summarize the evidence relevant to the guilt and responsibility of the Defendant Rosenberg.

In spite of Rosenberg's efforts to minimize both his role and his importance, in spite of his efforts to juggle with historical facts and events, he cannot deny that he was the official ideologist of the Nazi Party; that already a quarter of a century ago, he had laid the "theoretical" foundations of the fascist Hitlerite State, which during this whole period morally corrupted millions of Germans, preparing them "ideologically" for the monstrous crimes committed by the Hitlerites—crimes unprecedented in history, and which are the subject of this Trial.

When, at the Trial, Rosenberg was asked: "Were you not one of Hitler's closest collaborators?" he did not even speak—he shouted in reply: "That is not true, I never was." But however hard Rosenberg tried to deny his "Führer," he has not succeeded in washing away the stigma of being "one of the oldest and the most faithful of Hitler's comrades-in-arms." For 25 years Rosenberg, first acting as Hitler's collaborator and afterward under his direction, worked out and assisted in the realization of the fantastic plan for world supremacy, having chosen, for the justification of this criminal plan, the misanthropic theory of racism.

The fact that Rosenberg utilized for his purposes garbled science and borrowed theories from Karl Lueger and Paul Lagarde, Count Gobineau, Oswald Spengler, and Arthur Moeller cannot affect the question of Rosenberg's guilt and responsibility. The important fact is that Rosenberg, having assembled all these "scientific excreta," raised the racial theories to a degree of racial fanaticism and

educated in this spirit the members of the Nazi Party and the youth of Germany. And when the representatives of the "master race" elaborated and committed acts of aggression, when the German occupation troops enslaved and exterminated nations and peoples, when the factories of death were created at Maidanek and Auschwitz, Treblinka and Chelmno, Rosenberg's share in all these crimes was not insignificant. All this was the outcome of the fascist racial ideology, the essence of which consists in the idea that the "Aryan, North Germanic" race is a "master race," and that all other races and nations belong to "lower strata."

Rosenberg's counsel said: "The Tribunal must judge crimes and not theories." In Rosenberg's case such an argument is clearly unconvincing. For Rosenberg not only confessed the fascist racial theory, but knowingly propagated it and instilled it into the conscience of the German people, this very theory which became a direct menace to the existence of the democratic European states. The person who carries microbes must be isolated, but the person who willingly disseminates microbes must be tried.

Rosenberg's criminal activities were not limited to the ideological preparation for aggression and to the propagation of man-hating theories. His activities had many facets. The criminal activities of the foreign policy department of the NSDAP have already been sufficiently elucidated at this Trial; this department, which for many years was subordinated to the Defendant Rosenberg, was in charge of a network of semilegal Nazi agencies abroad. The influence of this organization on the measures of foreign policy undertaken by Hitlerite Germany and in the initiation of aggressive wars was very great indeed.

One of the documents submitted by Neurath's counsel and accepted by the Tribunal reads as follows:

> "There existed at one time in Berlin three sorts of ministries for foreign affairs: Herr Rosenberg's Ministry, Herr Von Ribbentrop's Ministry, and the official ministry on Wilhelmstrasse."

And finally, Rosenberg's letter to Hitler of 6 February 1938 stressed his real influence on the foreign policy of Hitlerite Germany and his "merits" in this field, when he applied for membership in the Secret Cabinet Council.

I see no need for giving an analysis of all Rosenberg's criminal activities and I only intend to dwell briefly on his activities as "Führer's plenipotentiary" and later as Reich Minister for the Occupied Eastern Territories. In these functions Rosenberg most clearly showed himself as a participant in the criminal conspiracy.

Rosenberg declares that he was against war with the U.S.S.R. and that he learned from Hitler about the preparations for an attack against the U.S.S.R. only when all the orders to military channels had already been issued, that he never really had any influence on the foreign policy of Hitlerite Germany. I affirm, Your Honors, that all these declarations of Rosenberg are false.

It is a well-known fact that the plan for a German crusade against Soviet Russia was actually the starting point of the National Socialist foreign policy, as set out in the 1921 New Year publication of the *Völkischer Beobachter,* and that the author of this policy was Alfred Rosenberg. It was Rosenberg who, inspired by Ludendorff and Rechberg, propagated—together with Hitler—a foreign policy directed toward the creation of an anti-Semitic, anti-Bolshevik, and anti-British continent of Europe.

Rosenberg's speeches, setting out plans for the "exchange" of the Polish Corridor for the Ukraine, his "diplomatic" journeys into certain countries after the seizure of power by the fascists, his clumsy efforts to realize the foreign policy program of the fascists, were widely voiced in the press.

The documents submitted give a clear picture of Rosenberg's feverish activities in April 1941 during the period immediately preceding the attack by Germany on the U.S.S.R., when he was nominated the Führer's plenipotentiary for the central control of the questions connected with the eastern European territories.

On 7 April 1941, 2 weeks prior to his nomination, Rosenberg sent his proposals to Hitler for the division of the Soviet Union into Reich Commissariats and for the appointment of fascist governors for the occupied territories. Byelorussia and the Ukraine, Minsk and Kiev, Rostov and Tiflis, Leningrad and Moscow, were all enumerated in Rosenberg's proposals. For the post of Reich Commissioner of Moscow, Rosenberg recommended the notorious Erich Koch.

We have heard about Rosenberg's meetings with Brauchitsch and Raeder and of his conferences with Funk, General Thomas, State Secretary Backe and others, on the questions of economic exploitation of the eastern territories, and about his negotiations with Ribbentrop, the SA chief of staff, and the chief of the German Intelligence Service, Admiral Canaris. Already 6 weeks prior to the attack on the U.S.S.R. he drafted directives for all the Reich Commissioners of the eastern territories to be occupied, in which he provided for a "Reich Commissariat Russia" and a "Reich Commissariat Caucasus," while the Byelorussian Republic was to form a part of the "Reich Commissariat Ostland."

Rosenberg attempted to affirm that he did not share in the aggressive and predatory aims of the war against the U.S.S.R. and

that on the contrary, in his capacity of Minister for the Occupied Eastern Territories, he even loaded with benefits the population of these territories. And this he dared to affirm, when the directive to the Reich Commissioner of the Baltic States and Byelorussia described his aims as follows:

> "... the creation of a German protectorate for the purpose of subsequent inclusion of these regions in the Greater German Reich, by the Germanization of elements suitable from the racial point of view, by the colonization by representatives of the Germanic race, and by the extermination of all undesirable elements."

And this is maintained after the following recommendations were made in another of Rosenberg's directives on the subject of the civil administration in the Eastern Occupied Territories:

> "The main and foremost task ... is the furtherance of the interests of the Reich. The regulations of the Hague Convention regarding land warfare are no more valid, since we can consider the U.S.S.R. defeated.... For this reason, all measures which the German administration may consider necessary or convenient are admissible."

Rosenberg was too hasty in his assertion that the U.S.S.R. was defeated, he let the cat out of the bag and gave away his most secret plans. But this document is also an irrefutable proof, invalidating all the attempts of the defendant to cast the burden of responsibility for the monstrous crimes perpetrated by the German fascist oppressors throughout the occupied territories of the U.S.S.R. from his own shoulders to those of individual officials and policemen, to Koch and Himmler.

It was Rosenberg who permitted the repudiation of the Hague Convention and the utilization of all measures which might seem "convenient." When Koch, for his "convenience," exterminated the population of the entire Zuman district, he was merely acting in the spirit of this directive of Rosenberg's.

Rosenberg described here his dissensions with Koch. He alleged that he followed a humanitarian policy and even imported agricultural machinery. Even if Rosenberg did indeed, from time to time, object to Koch's actions, it was only because he was afraid of premature publicity, and because he was afraid that Koch's unparalleled ill-treatment of the Ukrainian people would only strengthen the resistance movement. Rosenberg was influenced by fear and not by any humanitarian considerations. Rosenberg's true policy is set out in numerous documents which have now become known to the public opinion of the world and which are in the files of the Tribunal.

In an official note for the Führer dated 16 March 1942, Rosenberg set out the aims of the German policy in the occupied territories of the U.S.S.R. and, primarily, in the Ukraine:

> "... the utilization of minerals, the creation of a German colony in certain regions, no artificial intellectual development of the population, but its preservation as a source of manpower."

In his report on the reorganization of the Caucasus Rosenberg wrote that:

> "The problem of the Ostland consists in the transplanting of the Baltic nations to the soil of German culture and in the preparation for an adequate German strategic frontier. The task of the Ukraine is to secure necessary food supplies for Germany and Europe, and raw materials for the continent. The problem of the Caucasus is primarily a political problem and it will lead to the expansion of continental Europe, headed by Germany, from the isthmus of the Caucasus to the Near East."

And finally, I would like to point out that it was Rosenberg who had made the following statement in a speech before the German Labor Front, on the policy adopted in the occupied U.S.S.R. territories: "It seems that if these peoples are left to themselves, arbitrary justice and tyranny will be the most suitable form of government." The Defense affirm that Rosenberg and his Einsatzstab were not concerned with the plunder of cultural treasures, but with their preservation. This statement is also entirely false. Numerous documents read into the record at this Trial have proved that as early as April 1941, that is, more than 2 months prior to the attack on the U.S.S.R., Rosenberg was organizing special units and staffs and was elaborating plans for the removal of the cultural treasures of the Soviet Union.

On 16 October 1941 Rosenberg wrote to Hitler as follows:

> "I have issued an order to the same Einsatzstab of my organization now to carry out in a more comprehensive manner in the Eastern Occupied Territories the work already accomplished in the West. ... having the whole picture before our eyes, we can satisfy all the just wishes and demands of the agencies of the Greater German Reich. On this basis I would also be willing personally to guarantee that all the art treasures for Linz and other museums which can be utilized for your own plans, my Führer, were factually used for this purpose."

On 17 October 1944 Rosenberg wrote to Lammers that for the transport of goods "listed" by his organization, it was necessary to use 1,418,000 railroad cars, while 427,000 further tons were shipped

by water. In this same letter Rosenberg mentioned that among the confiscated goods removed to Germany, there were 9,000 cars with agricultural and other machinery. And after this he dares to speak about some machines which he has allegedly imported into the Ukraine!

And finally I shall speak about the ridiculous theory of the so-called Rosenberg's "noble anti-Semitism." It is absurd to argue with Rosenberg's counsel who affirms that such a thing as a "noble anti-Semitism" really exists, and it is all the more absurd to argue with Rosenberg. In my statement to the Tribunal I threw some light on the fascist propaganda contained in the speech of the Defense. I would now like to recall to the Tribunal the text of two of Rosenberg's documents:

In his directive of 29 April 1941 he wrote:

"The Jewish problem requires a general settlement; temporary measures are to be decided upon. (Compulsory labor for Jews, the creation of ghettos, *et cetera).*"

Even more cynical and frank is the statement made by Rosenberg in November 1942 when he, in his capacity of Minister for the Occupied Eastern Territories, addressed a conference of the German Labor Front:

"We must not be satisfied"—said Rosenberg—"with the deportation of Jews from one country to another and with the existence, here or there, of a large Jewish ghetto; no, our object must always remain the same. The Jewish problem in Europe and in Germany will be solved only when there are no more Jews left on the European continent."

And all the operations "Cottbus" for the extermination of Jews in the Baltic towns, in the Ukraine and Byelorussia—all these were carried out in conformity with Rosenberg's theories and with his agreement.

In 1937 Rosenberg received the German National Prize. Commenting on this event, the fascist press wrote as follows:

"Alfred Rosenberg has brilliantly succeeded with his books in building up the scientific and spiritual foundations and in consolidating and strengthening the philosophy of National Socialism.... Only future generations will be able fully to appreciate the profound influence of this man on the philosophical foundations of the National Socialist Reich."

But the future has now become the present. And I am sure that the Tribunal will be able duly to appreciate not only the influence exercised by Rosenberg on the "philosophical foundations of the National Socialist Reich," but also his active participation in all the crimes against peace and humanity perpetrated by the Hitlerites.

Frank.

A lawyer by training, the Defendant Hans Frank was one of those who liked to talk about the reception of the "ancient German" law for Germans, about "principles of justice" for the "select," about the "right of the chosen people" to annihilate nations and countries.

In 1939 he was the man who for a long time past had been corrupting the German legal concept, to whom Hitler entrusted the fate of subjugated Poland. Frank arrived in Poland to realize practically his entire program for the enslavement and extermination of the people on the territory of a country with an age-old history and with its own culture of high standing.

I should like to remind the Tribunal of some of Frank's views expressed during the first months of his stay in Poland, taken from his so-called "diary." It is hardly worth while to discuss with the counsel the probative value of this document. Frank himself declared to the Court that "this document was of historical importance" and to the question, "whether all his statements contained in the diary were true," he replied "they fully correspond to what I know."

On 19 January 1940 Frank declared with cynical frankness, at a conference of the departmental leaders:

> "On 15 September 1939 I was entrusted with the task of governing the conquered Eastern Territories and received a special order to ruin this territory ruthlessly as a war territory and a war trophy, and to turn it into a heap of rubble from the viewpoint of the social, economic, cultural, and political structure."

On 31 October 1939, in the presence of Goebbels, at a conference uniting the leading officials of the Government General, he declared: "A perfectly clear differentiation must be made between the German people—the master race—and the Poles."

He then remembered that Polish culture which Frank, as counsel Dr. Seidl has said here, cared for so greatly. He stated:

> "The Poles can be allowed only those possibilities for educating themselves which would prove the hopelessness of the destiny of their nation. Bad films alone or films demonstrating the might and greatness of the Germans can be taken into consideration for this purpose."

One of Frank's first instructions was the order to shoot hostages. Later on similar orders were to be counted by the hundreds and by the thousands until they finally culminated in the edition of the regulation dated 2 October 1943.

On 10 November 1939 Frank was informed that the day of Polish independence was approaching and that posters were to be

hung up on certain houses to remind the Poles of their national holiday. The following entry then appeared in Frank's diary:

> "... the Governor General decreed that one inhabitant of the male sex is to be taken from every house on which an affixed poster of this kind is not removed and is to be shot.
>
> "The Pole must feel that we do not intend building a constitutional state for him."

The short extract we are quoting from the speech Frank made at the conference of the chiefs of departments of the Government General characterizes this Hitlerite "lawyer" far better than any lengthy excerpts taken from his full-dress speeches which we were obliged to listen to here.

Frank's criminal activities in Poland were so very manifold that there is no possibility, in a short speech, to reconstruct to the Tribunal the innumerable proofs of his guilt which have been submitted in this courtroom and which are evidently still fresh in the memory of the judges.

But from Frank's criminal activities in Poland we must isolate that predominant trait which is Frank's criminal activity as the murderer of millions of people. Of course he looted; he was Göring's plenipotentiary for the Four Year Plan and he looted, so to say, "in the course of his duties."

He sent over 2 million Poles to Germany for forced labor. The attempt of the defense to represent Frank as "the enemy of coercive methods of recruitment" can be based only on the assumption that nobody excepting counsel had studied Frank's diaries. For Frank never can escape documents such as the minutes of the meeting of the departmental leaders, dated 12 April 1940, or the notes of Gauleiter Sauckel of 18 August 1942, or the transcript of the meeting with Bühler, Krüger, and others of 21 April 1940.

But he sent people to forced labor in order to wring them dry in the interests of the Reich before sending them to their doom. The regime, established by Hans Frank throughout Poland during all the stages of the temporary German domination in this country, was a regime for the inhuman destruction of millions of people by varied, but invariably criminal, methods.

It is not merely incidental that the German fascist assassins who annihilated 11,000 Polish prisoner-of-war officers in Katyn forest should refer to the regime which Frank instituted in Poland as an example for their own activities—as the Tribunal has been able to ascertain not so very long ago in this courtroom from the evidence presented by the former deputy mayor of Smolensk—Professor Bazilevsky.

I consider it to be particularly important, at this point, to emphasize the concept Frank had of the relations with the Polish population after the war:

> "I insistently draw your attention"—said Frank—"to the fact that, should peace be concluded, nothing would change in this respect. This peace will signify that we, as a world power, will conduct more firmly than hitherto our general line of policy. This peace would signify that we will have to carry out colonization on a still far greater scale, but the principle will not have changed."

This was stated in 1940 when Frank was contemplating the first mass murder of the Polish "intelligentsia," the so-called "AB Action."

In 1944, at the meeting of the agricultural leaders at Zakopane Frank said:

> "If we win the war, then, as far as I care, we could make mincemeat of the Poles and Ukrainians and of all those who are idling around . . . then come what may."

It was not Frank's fault that as far back as 1944, dreaming to make "mincemeat" of Poles and Ukrainians, he was compelled to add "if we win the war." At this time he could not be so emphatic in his utterings as on 2 August 1943, when at the reception of the Party speakers in the Royal Palace of the Kraków Castle he spoke about the exterminated Polish Jews: "Here we started out with 3,500,000 Jews, now but a few workers' companies remain of this number. All the others have—let us say—emigrated."

Both Frank and his counsel attempted to prove that the defendant had known nothing about the happenings in the concentration camps of the Government General. However, in these secret reports addressed by Frank to Hitler, which counsel tried to utilize on Frank's behalf, we may find a confirmation of the fact that Frank was well informed about what was occurring in the camps. It is said there: "The majority of the Polish intellectuals have not reacted to the news from Katyn and quote in answer similar atrocities in Auschwitz."

Frank then quotes a highly characteristic passage describing the reaction of the Polish workers to the provocative communications of the Germans about Katyn: "There are concentration camps in Auschwitz and Maidanek where mass murder of the Poles was carried out on assembly lines." And further:

> "Today, unfortunately, Polish public opinion, and not the intellectuals alone, compares Katyn to the mass death rate in the German concentration camps, as well as to the shooting of men, women, and even of children and old people, during the infliction of collective punishment in the districts."

After the secret report addressed to Hitler no other new course was adopted by Frank. On the contrary, Frank published his regulation of 2 October 1943 which the defendant himself termed as "dreadful" when questioned by his counsel. After this regulation had been carried into effect, many thousands of innocent people became the victims of this decision. The number of executions increased steadily till it amounted to 200 persons executed at one time in Warsaw.

The same happened in the streets of all the Polish towns where the so-called "police courts" carried out executions, as stated in the text of the regulation itself, immediately following the verdict. The people doomed to die were brought to the execution grounds, wearing paper clothing, their lips glued together with adhesive tape, or their mouths stuffed with plaster. After their imprisonment they seemed to have been drained of the last drop of blood. At the state conference held in Kraków on 16 December 1943, where Frank stated with satisfaction that the executions had had "favorable consequences," another question was simultaneously discussed. In the records of this conference it is stated:

> "One must perhaps also consider whether special places of execution should not be created for this, for it had been ascertained that the Polish population streamed to places of execution which were accessible to all, in order to put the blood-soaked earth into containers and take these to the church."

The defense counsel tried to speak here about the interminable dissensions of Frank with the Police; he had allegedly disagreed with their action. Let us see what kind of dissensions these were.

The first special action carried out in Poland, namely, the AB Action—the extermination of several thousands of Polish intellectuals—had not been initiated by the Police, but by Frank himself. According to Hitler's decree of 2 May 1942, the chief of Police was subordinated to the Governor General. When some dissensions between Frank and the chief of Police did arise, it was Krüger who had to leave his post of Police chief, whereas Frank remained Governor General of Poland. As for Obergruppenführer Koppe, who took over from Krüger, who else but Frank expressed his thanks to him on 16 December 1943 for shooting the hostages, his "gratitude for his fruitful work" and noted with satisfaction, "One of the greatest specialists is at the head of the Police in the Government General." It is incomprehensible what dissensions with the Police counsel Seidl was talking about.

The defense even tried to represent Frank as "a kind of peaceful anti-Semite," who, while entertaining a negative attitude toward the Jewish people, never initiated massacres of the Jews or even

instigated them. It is incomprehensible in this case how the following words of Frank would be interpreted by the counsel: "The Jews are a race that should be exterminated. Wherever we catch even one, we shall do away with him."

Or his declaration at the government session of 24 August 1942, when he said:

> "The fact that we have condemned 1.2 million Jews to starvation may only be mentioned by the way. It stands to reason that if these Jews do not die of starvation, it will precipitate active measures against the Jews."

The criminal activity of this hangman of the Polish nation led to the extermination of millions.

"You see how the state organs are working, you see that they do not shrink before anything and people by the dozen are put up against the wall." This is the manner in which Frank himself, at a conference of the Standartenführer held on 18 March 1942, characterized the bloody regime of terror set up throughout Poland.

"I did not hesitate to declare that for one German killed, up to a hundred Poles would be shot"—these words were pronounced by Frank on 15 January 1944, at a meeting of the Political Leaders of the NSDAP. "Had I gone to the Führer and told him: 'My Führer, I report that I have destroyed another 150,000 Poles,' he would have said: 'Fine, if it was necessary' "—Frank stated this on 18 March 1944 while making a speech at the Reichshof, that same Frank who now tries to convince the Tribunal that he had some "differences of opinion on matters of principle" with Hitler and Himmler.

Those declarations that Frank made during the first months of his stay in Poland constituted a genuine murder program, perpetrated by the defendant methodically, ruthlessly, and according to plan. Frank, of course, was fully aware of the fact that should war not lead to victory he would have to bear the full responsibility for the crimes committed in Poland, as well as for his participation in the fascist conspiracy. As far back as 1943 Frank spoke about this at a meeting with his accomplices. We must give credit where it is due: As a lawyer he was far more correct in his depiction and formulation of the concepts of a criminal conspiracy than certain lawyers at this Trial who, basing themselves on obsolete ideas, endeavor to dispute the foundation for a conspiracy put forward by the Prosecution. It was at this government meeting, held jointly with the Police on 25 January 1943, that the then Governor General declared to Himmler's hyenas:

> "... I should like to state one thing: We must not be squeamish when we learn that a total of 17,000 people have been shot. After all, these people who were shot are also war victims ... We must remember that all of us who are gathered together

here figure on Mr. Roosevelt's list of war criminals. I have the honor of being Number One. We have therefore become, so to speak, accomplices in the sense of world history. For this very reason we must get together, we must feel together, and it would be ridiculous if we were to let ourselves get involved in any squabbles over methods."

This appeal to murder is very far from the "interminable quarrels with the Police" which Frank's counsel has mentioned here.

The defendant made a mistake about one thing: He was incorrect in defining his place in the dock. But he was not mistaken about the fundamental facts: He took his place in the dock as a "criminal in the sense of world history."

Frick.

The history of the development of the Nazi movement in Germany and the numerous crimes of the Hitlerites is indissolubly connected with the name of the Defendant Wilhelm Frick. As Minister of the Interior of the Hitlerite Government, Frick participated in the promulgation of numerous laws, decrees and other acts directed at the destruction of democracy in Germany, the persecution of the Church, the discrimination against the Jews, *et cetera.* In this capacity the Defendant Frick contributed actively to the creation in Germany of the Hitlerite totalitarian State.

Over a period of many years the German Secret State Police—Gestapo—which was to acquire a grim and ill-famed reputation was subordinated to the Defendant Frick. The directive concerning the extermination of old people and of the insane was issued in 1940 by none other than the Defendant Frick. In his function of Minister of the Interior in Hitlerite Germany, as testified by the witness Gisevius in this Court, Frick was fully cognizant of the vast system of concentration camps spread throughout the Reich, as well as of the existence in these camps of an inhuman regime.

The part played by the Defendant Frick in the preparation and realization of the Hitlerite Government's aggressive plans was very considerable. He was a member of the Reich Defense Council as well as Plenipotentiary General for Administration. All the documents by which the Hitlerite conspirators legalized the incorporation by Germany of the territories seized were signed, among the other Hitlerite ringleaders, also by the Defendant Frick.

In his capacity of Protector of Bohemia and Moravia the Defendant Frick bears personal responsibility for all the crimes committed on that territory by the Hitlerites.

After the treacherous attack of Hitlerite Germany on the Soviet Union, the Defendant Frick's Ministry of the Interior participated actively in creating the administration of the territories seized in

the U.S.S.R. The administrative machinery of the German occupational authorities in the East was mainly staffed by officials of the Ministry of the Interior.

There is no need to dwell once again on the part played by this administrative machinery, which had been created with the most active co-operation of the Defendant Frick, for the extermination, enslavement and the other inhuman actions carried out against the civilian population of the occupied territories.

Frick bears full and direct responsibility for all these crimes, inasmuch as he was an active participant in the Nazi conspiracy.

Streicher.

Notwithstanding the fact that during the war years the Defendant Julius Streicher did not formally hold functions directly connected with the perpetration of murders and mass executions, it is hard to overestimate the crimes committed by this man. Together with Himmler, Kaltenbrunner, Pohl, and those who conceived, constructed and brought into action the gas chambers and gas wagons; together with those who personally committed mass actions, Streicher must bear responsibility for the monstrous crimes of German fascism. The incitement to national and racial dissension, the cultivation of perverted cruelty and the call to murder—all these not only represented the Party duties of this man for many years, they were also the source of his income.

And it is not by accident that in his greeting to Streicher of April 1937, which is already known to the Tribunal, Himmler expressed his high esteem for the merits of the *Stürmer* and of its editor-in-chief.

One can consider Streicher as the actual "spiritual father" of those who quartered the children of Treblinka. Had it not been for the *Stürmer* and its editor German fascism would not have been able to educate, at such short notice, those mass murder gangs who put into effect the criminal plans of Hitler and his thugs by murdering over 6 million European Jews. Over a period of many years Streicher spiritually corrupted the children and the youth of Germany. The detestable "children's editions" of *Der Stürmer* have been submitted to the Tribunal.

And therefore, together with Baldur von Schirach, Streicher must bear responsibility for the selection of Jewish children from the Lvov ghetto for target practice by the morally perverted Hitlerjugend. It is not by accident that Von Schirach held Streicher's "historical merits" in so high esteem.

The fanatical Nuremberg Laws were only the "beginning of the struggle" for this "Judophobe Number 1," as he called himself, who was also the organizer of the first anti-Jewish pogroms. As the Tribunal will recall, after these laws were issued, Streicher called

for the actual extermination of the Jews in Europe and wrote: "This problem will only be solved when world Jewry is exterminated."

I will not dwell on the shameless and mendacious "ritual murder numbers" of *Der Stürmer*, intended to incite the SS men to the killing of millions of innocent persons and to justify any atrocity directed against the Jews. These proofs of Streicher's guilt, which were *inter alia* submitted to the Tribunal, are indisputable and of common knowledge. In 1939 he anticipated Maidanek and Treblinka and wrote that "perhaps graves alone will testify to the previous existence of Jews in Europe." In 1943, when the gas chambers of Treblinka and Auschwitz were already engulfing millions of victims, *Der Stürmer* published articles inciting to the liquidation of the "ghetto," articles full of lies and malice; and finally *Der Stürmer* could state with sadistical satisfaction, that "the Jews of Europe have disappeared."

Streicher lied all his life. He attempted to lie here in Court. I do not know whether he believed he would be able to deceive anybody by these lies, or whether he lied from habit or from fear. But it seems to me that it must be apparent, even to the defendant himself, that his last lie will not deceive anybody and will never bring him salvation.

Schacht.

In carrying out a vast and complicated task, the Defendant Hjalmar Schacht played a prominent part in the preparation and realization of the criminal plans of the Nazi conspirators. Schacht's position, where his defense is concerned, is extremely simple.

If he is to be believed, purely patriotic motives attracted him to Hitlerism. He was against aggressive wars but in favor of rearmament for Germany in order to maintain peace. He was all for the return of Germany's colonies in view of establishing economic stability in Europe. Having come to the conviction that the policy of the Nazi Government was directed toward excessive armament and thereby threatened with another world war, Schacht went over to the opposition. He sabotaged the measures taken by the Hitlerite Government and, as a result, he was persecuted as a participant in the plot against Hitler. Defendant Schacht now strives to depict the enthusiastic letters, full of expressions of loyalty, which he addressed to Hitler, as a method of camouflaging his true feeling of opposition toward the Hitlerite regime.

Actually, Schacht's connection with the Nazi movement dates back to 1930. Schacht gravitated toward National Socialism, and both Hitler and Göring sought Schacht's support. Indeed the latter, with his vast connections in Germany's industrial and financial spheres, could, better than anyone else, render invaluable services

to the Nazi movement. And this he did. As far back as 29 August 1932, in a letter addressed to Hitler, Schacht assured the latter of his loyalty.

These were not mere words, for more than anybody Defendant Schacht played a decisive part in Hitler's advent to power. It was he, Schacht, who organized the demand formulated by the German industrialists for Hitler to be appointed Reich Chancellor. As early as 1932 he, Schacht, advised Von Papen, then Reich Chancellor of Germany, to hand over his post to Hitler. It was Schacht again who in 1933 on the eve of the Reichstag elections called a conference of industrialists who collected an election fund of several million marks for the Nazi Party.

Hitler's closest follower, Goebbels, thus characterized the part played by Schacht and his importance in the creation of Nazi Germany. On 21 November 1932 he wrote down in his diary: "In a talk with Dr. Schacht I came to the conviction that he fully shares our point of view. He is one of the few who absolutely agrees with the position of the Führer."

In his Leipzig spring fair speech on 4 March 1935 the Defendant Schacht himself defined his part in the Nazi State:

> "I can assure you that all that I do and say is in full agreement with the Führer and that I will do and say nothing that would not be approved by the Führer. That is why it is with the Führer, and not with me, that all decisions rest in economic matters."

As expected by Schacht, Hitler appreciated his merits at their full value. On his advent to power in 1933 Hitler first appointed Schacht to the post of president of the Reichsbank then to that of Reich Minister of Economics and finally to the post of Plenipotentiary for War Economy.

The Prosecution and the proceedings have clearly proved the extraordinary part played by Schacht in the preparation of Germany's armaments and, consequently, in the launching of aggressive wars. The former War Minister, Von Blomberg, testified that in 1937 the plans of the Armed Forces were nearing completion and that Schacht was informed of these plans and of their financing.

Schacht was one of the most consistent supporters of the Nazi criminal plans. In a talk with the United States Ambassador Fuller on 23 September 1936 Schacht stated that: "Germany absolutely needs colonies. If it is possible, we shall acquire them by peaceful negotiations. If not we shall seize them."

Speaking in Vienna in March 1938 Schacht declared:

> "Thank God, this could not hinder the great German people in its forward march because Adolf Hitler unified German will and German thought. He strengthened it with reborn

armed forces and in the end he gave an outer shape to the inner unity of Germany and Austria."

Defendant Schacht was entrusted with extraordinary powers in the sphere of war economy.

Over a period of many years Schacht cumulated the functions of president of the Reichsbank, Minister of Economics and Plenipotentiary for War Economy. If only as a result of these important functions, the Defendant Schacht played an enormous and decisive part in the creation and resurrection of Nazi Germany's war economy and Armed Forces. This part of the Defendant Schacht is clearly described in the numerous laudatory letters which he received from Hitler. The Defendant Schacht, and no other, was the creator of the adventurous method of issuing so-called mefo bills, by which 12 billion Reichsmark were allotted, apart from budget allocations, to Germany's economy for purposes of rearmament. As mentioned before, the Defendant Schacht attempted, at various periods of his activities, to stress his alleged and ever-increasing dissension with the Nazi regime. In reality Schacht was playing a double game. On the one hand he shielded himself from the responsibility for the criminal policy of the Nazi Government by flirting with persons who actually did strive to overthrow this regime; on the other hand he remained loyal to the regime to all intents and purposes.

It was only in 1943, when the downfall of Nazi Germany became completely apparent to such a hard-boiled politician as Schacht, that he contacted more closely the circle of the opposition. However, true to himself, he took precautions for any event and did not actually do anything personally to overthrow the Nazi regime. That is why Hitler spared him.

This is the portrait of the Defendant Schacht, and this is the part he played in Hitler's conspiracy and war crimes. It is the part of the creator of Nazi Germany's war economy and of an instigator of the second World War launched by the criminal Nazi Government.

Funk.

Walter Funk became a Nazi long before his official admission in 1931 into the membership of the NSDAP, and he remained a Nazi to the end. His economic knowledge, his experience as a journalist, and his extensive connections with the leaders of the German industry, trade, and finance were placed by him at the service of the Hitlerite conspirators. An article published in the newspaper *Das Reich* on 13 August 1940, under the heading "Walter Funk—A Pioneer of National Socialist Economic Reasoning," read as follows:

"Walter Funk remained true to his principles because he was, is, and always will be a true National Socialist, a champion devoting all his labors to the victory of the Führer's ideals."

The Führer's ideals are only too well known. Funk devoted 15 years of his life to these "ideals." Funk declared that he had nothing in common with the SS but it was he, Funk, who transformed the vaults of the Reichsbank into depositories for the treasures plundered by the SS men in the eastern and other occupied territories. Funk personally gave the orders, after his negotiations with Himmler, to take into the Reichsbank the gold teeth and plates, the spectacle frames and other valuables belonging to the victims tortured to death in numerous concentration camps.

The SS Gruppenführer Hayler was Funk's deputy. Also under Funk's direction operated Ohlendorf, the murderer, with the death of 90,000 persons on his conscience.

Funk, in supplement of Schacht's measures, placed the whole of Germany's economy at the service of Hitlerite plans for aggression and later on, the economy of the territories occupied by Germany.

As early as May 1939 Funk, together with his deputy, Landfried, elaborated plans for financing the war and the utilizing of all economic resources of Germany and of occupied Czechoslovakia. On 23 June 1939, Funk took part in the conference of the Reich Defense Council which adopted detailed plans for the placing of all national economy on a war footing.

Already at that time, Funk was not only informed of Germany's impending attack on Poland, was not only co-operating in the realization of this aggressive plan, but was also economically preparing new war and the seizure of new territories. These were the "Führer's great political aims" which were set out by Funk a few months later in his article entitled "Economic and financial mobilization."

I shall mention one more document; on 25 August 1939, Funk wrote to Hitler:

"Generalfeldmarschall Göring told me that you, my Führer, yesterday evening approved the main points of the measures conceived by me for the financing of a war, stabilization of prices, fixation of wages, and the organization of an obligatory war contribution; this news made me profoundly happy."

A long time before the treacherous attack of Germany against the U.S.S.R., Funk participated in the elaboration of plans for the spoliation of the riches of the Soviet Union. Funk attached his collaborators to Rosenberg's Ministry and to that predatory organization Economic Staff East. Funk's agents participated also in the plunder of Czechoslovakia, Yugoslavia, and other occupied countries. Funk was the president of the "Continental Oil Company," created

for the exploitation by the Germans of the crude oil wells in the Occupied Eastern Territories, and especially, the oil fields of Grozny and Baku.

Funk was in full agreement with the predatory aims of the war launched by Germany against the U.S.S.R. He made a speech on 17 December 1941 in Prague, to the effect that the East was the future German colony. Funk participated at the conference held on 6 August 1942 at Göring's office for the discussion of the most effective measures for the economic plunder of the occupied territories of the Soviet Union, Poland, Czechoslovakia, Yugoslavia, France, Norway and other countries.

At this conference, as well as at the conference of the Central Planning Board, Funk participated in the drafting of plans for the deportation to slavery of millions of people from the occupied territories.

Such are the fundamental stages in the criminal activities of that Hitlerite conspirator, the Defendant Funk—Hitler's personal adviser on economic questions since 1931, Reich Minister and Plenipotentiary for Economy, president of the Reichsbank and member of the Reich Defense Council—during the period of the preparation and the realization of the criminal plan, the conspiracy.

The guilt of Funk—this active participant of fascist conspiracy, for the crimes against individuals, for war crimes and crimes against humanity—has been fully proved and he must bear full responsibility for the evil deeds perpetrated by him.

Schirach.

Since 1931 and until the end of the war the Defendant Baldur von Schirach was at the head of the Nazi youth movement. After the publication on 1 December 1936 of a decree concerning the Hitler Youth, Von Schirach was, in his capacity as the Reich Youth Leader, directly subordinated to Hitler.

In his deposition before the Court the Defendant Schirach, in his efforts to evade the responsibility for the education of German youth in the spirit of National Socialist ideas, made frequent references to the fact that the Hitlerjugend was a youth organization independent of the Nazi Party and the Hitlerite Government. To defend himself, the Defendant Schirach considered it both possible and relevant to refer to the great Goethe whose words—"youth itself educates young people"—he quoted with open cynicism.

Goethe was, of course, right when he said that "youth itself educates young people." But he meant the healthy, normal, joyful youth, and not youth morally corrupted with the obscurantism of the Hitlerites, so clearly described by Hitler's words addressed to Rauschning:

"We shall educate a youth before which the whole world shall tremble, rough, exacting, cruel youth. That is what I want. Our youth must possess all these qualities. It must be pitiless before the sight of suffering. It must be without weakness or softness. I want to see the glint of the wild animal in their eyes."

And the Defendant Schirach instilled systematically the ideas of Hitlerism in the conscience of German youth and educated the German youth in the spirit of Hitler's wishes, modeling them after the image of the arrant leaders of the Hitlerite gang.

During cross-examination, the Defendant Schirach was finally forced to admit that the youth of Germany was brought up in the spirit of the National Socialist idea; that members of the SA, officers of the German Armed Forces and the SS participated in their education; and that intense military training of the youth was being carried out in Germany. For this purpose special agreements were made between the Reich leaders of Hitlerjugend and the OKW, as represented by the Defendant Keitel and the Reichsführer SS Himmler, which provided for the education of youth in the spirit of aggressive militarism, and appropriate recruitment and the preparation of youth for the Armed Forces and the units of the SS.

The part played by the Defendant Von Schirach and his participation in the common conspiracy, in war crimes and crimes against humanity, are characterized best of all by the behavior of German youth brought up in Hitlerjugend during the war.

The Soviet Prosecution have presented to the Tribunal under Document Number USSR-6, in conformity with Article 21 of the Charter, a report of the Extraordinary State Commission about the crimes of the Germans on the territory of Lvov. This report records the declaration of the French citizen, Ida Vasseau, about the inhuman cruelty of the members of the Hitlerjugend against young children, whom they used as targets for shooting practice. In her written deposition of 16 May 1946, and also in her answers to the questionnaire of counsel for the Defendant Schirach, Ida Vasseau has fully confirmed this declaration.

Conclusive testimony about the actions of the members of the Hitlerjugend within the cadre of the Armed Forces was given by a German soldier, prisoner of war, Gert Knittel, himself a former member of the Hitlerjugend since 1938 on, who in 1942 at the age of 18 enlisted in German Army.

Describing his participation in numerous crimes, Gert Knittel declared:

"In the locality of Lishjask in June 1943 our company set fire to a house with a number of people in it . . . All who tried to

jump out of the house, we shot down, excepting one old woman whom we did not shoot, as she lost her mind under our very eyes . . ."

For all these crimes the Defendant Von Schirach bears full responsibility together with this Gert Knittel and tens of thousands of others.

Schirach himself did not, of course, shoot, did not set on fire; but he did arm the German youth, morally corrupted them and prepared them for the perpetration of every atrocity.

But the activities of the Hitlerjugend during the war and of the Defendant Schirach were not limited only to these crimes. The Hitlerjugend actively participated in the preparation of the war of aggression by creating fifth columns in Poland and Yugoslavia; the official reports of the Polish and the Yugoslav Governments testify to this fact. The Hitlerjugend organization took an active part in the execution of all the measures undertaken by the Ministry for the Occupied Eastern Territories, and this is proved by the report of the Defendant Rosenberg, presented to the Tribunal as Document Number 1039-PS; it also actively participated in the deportation for slavery, from the occupied territories, of children between the ages of 10 and 14, which fact is proved by a document presented to the Tribunal under Document Number 031-PS.

In his capacity of Reichsstatthalter and Gauleiter of Vienna, Schirach personally directed the eviction from Vienna of 60,000 Jews, who subsequently were exterminated in the concentration camps of Poland. The documents presented by the Prosecution—weekly reports addressed to Schirach—prove the fact that he was informed of all the numerous crimes perpetrated by the German Armed Forces and the occupational authorities in the East and, in particular, about the tragic fate of the tens of thousands of Jews deported from Vienna.

In 1940, the Defendant Schirach sent a telegram to Bormann, in which he demanded the destruction from the air of one of the cultural towns of Great Britain, as a reprisal for the murder of Heydrich, hangman of Bohemia and Moravia. This telegram is in itself a sufficiently vivid and convincing description of the moral aspect of Von Schirach's character. Faithful to the Hitlerite clique right until the end, aware of all its criminal deeds, in which he himself had actively participated—the Defendant Von Schirach is one of the most sinister figures of the Third Reich.

THE PRESIDENT: The Tribunal will adjourn now.

[The Tribunal adjourned until 30 July at 1000 hours.]